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CLERK

No. 95-1340

IN THE
Supreme Court of the United States
OCTOBER TERM, 1996

HUGHES AIRCRAFT COMPANY,

Petitioner,

v.

UNITED STATES EX REL. WILLIAM J. SCHUMER,

Respondent.

**On Writ of Certiorari to the
United States Court of Appeals
for the Ninth Circuit**

JOINT APPENDIX

KENNETH W. STARR
Counsel of Record

KIRKLAND & ELLIS
655 Fifteenth Street, N.W.
Washington, D.C. 20005
(202) 879-5000
Counsel for Petitioner

DAVID SILBERMAN
Counsel of Record
BREDHOFF & KAISER, P.L.L.C.
1000 Connecticut Avenue, N.W.
Washington, D.C. 20036
(202) 833-9340
Counsel for Respondent

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The following opinions, orders, and documents have been omitted in printing this Joint Appendix because they appear on the following pages in the appendix to the printed Petition for Certiorari:

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UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES *ex rel.*, SCHUMER,

v.

HUGHES AIRCRAFT CO.

CIVIL DOCKET FOR CASE NO. CV 89-0390 MRP
(Bx)

Date	No.	PROCEEDINGS
1/23/89	1	COMPLAINT filed. Issued Summons. Case may be referred to Magistrate Brown for discovery.
3/21/89	2	NOTICE OF SERVICE on the United States filed by plaintiff.
4/19/89	3	STIPULATION of relator and the United States for an order lifting seal, extending time of the United States to inform the Court of its election whether to intervene, and staying proceedings filed by the United States.
4/19/89	4	ORDER that the seal placed upon this action by 31 U.S.C. § 3730(b) be lifted as of the date of this order; relator be allowed to serve complaint upon defendant; time within which the United States may complete its

Date	No.	PROCEEDINGS
		investigation of relator's allegations and inform the Court be extended to 7/24/89; all other proceedings in this action be stayed until ten days after the United States has informed the Court of its election.
		* * * *
10/23/89	11	ORDER that the time within which the United States may complete its investigation of the relator's allegations and inform the Court of its election whether to intervene in this action shall be extended to and including 1/23/90, and that all other proceedings in this action shall be stayed until 10 days after the United States has informed the Court of its election.
		* * * *
1/24/90	13	ORDER extending time to 3/27/90 for the United States to complete investigation of relator's allegations and inform the Court of its election; all other proceedings shall be stayed until ten days after the United States has informed the Court of its election.
		* * * *
3/13/90	16	ORDER that the time within which the United States may complete its

Date	No.	PROCEEDINGS
		investigation of the relator's allegations and inform the Court of its election whether to intervene in this action shall be extended to and including 5/30/90 and that all other proceedings in this action shall be stayed until ten days after the United States has informed the Court of its election.
		* * * *
4/3/90	18	FIRST AMENDED COMPLAINT filed by plaintiff William J. Schumer.
5/31/90	19	NOTICE OF ELECTION by the United States declining intervention filed by the United States.
		* * * *
7/23/90	21	NOTICE OF MOTION and motion to dismiss pursuant to Rule 12(b)(1) for unconstitutionality of "Qui Tam" statute, and memorandum of points and authorities, returnable 9/24/90 at 10:00 a.m., filed by defendant.
7/23/90	22	MEMORANDUM of points and authorities in support of defendant's motion to dismiss filed by defendant.
7/27/90	23	OPPOSITION to motion to dismiss filed by plaintiff.

Date	No.	PROCEEDINGS
		* * *
9/7/90	28	NOTICE OF MOTION and motion for summary judgment in favor of defendant Hughes Aircraft Co. pursuant to FRCP 56(b), returnable 10/29/90 at 10:00 a.m., filed by defendant. . .
9/7/90	29	MEMORANDUM of points and authorities in support of defendant Hughes Aircraft Co.'s motion for summary judgment pursuant to FRCP filed by defendant.
		* * *
9/7/90	31	AFFIDAVIT of John F. Wilson filed by defendant.
		* * *
9/28/90	37	NOTICE OF MOTION and motion for partial summary judgment, returnable 10/29/90 at 10:00 a.m., filed by plaintiff.
10/3/90	38	STIPULATION AND ORDER that for the purpose of defendant's motion for summary judgment, the supplemental affidavit of John F. Wilson may be filed.
		* * *

Date	No.	PROCEEDINGS
10/15/90	40	OPPOSITION to plaintiff's motion for partial summary judgment filed by defendant.
		* * *
10/15/90	42	STATEMENT of genuine issues of material fact filed by defendant.
		* * *
10/15/90	44	OPPOSITION by plaintiff to defendant's motion for summary judgment pursuant to FRCP 56 filed by plaintiff.
		* * *
10/22/90	46	SUPPLEMENTAL OPPOSITION to defendant's motion for summary judgment filed by plaintiff.
10/22/90	47	REPLY to opposition to plaintiff's motion for partial summary judgment filed by plaintiff.
		* * *
10/22/90	49	REPLY to plaintiff's opposition to motion for summary judgment filed by defendant.
10/29/90	50	Court denies motion to dismiss, motion for summary judgment, and motion for

Date	No.	PROCEEDINGS
		partial summary judgment; counsel for plaintiff to prepare order. M.O. C/R B Zaccaro.
11/1/90	51	ORDER that the motion to dismiss by defendant is hereby denied; the motion for summary judgment by defendant is hereby denied; the motion for partial summary judgment by plaintiff is denied; the motion to defer consideration of the motion for summary judgment by plaintiff is hereby denied.
11/13/90	52	ANSWER to first amended complaint filed by defendant Hughes Aircraft Co.
		* * * *
1/27/92	99	EXHIBITS in support of motion for summary judgment filed by defendant.
1/27/92	100	EXHIBITS in support of motion for summary judgment filed by defendant.
1/27/92	101	EXHIBITS in support of motion for summary judgment filed by defendant.
1/27/92	102	NOTICE OF MOTION and motion to dismiss for lack of subject matter jurisdiction, returnable 3/9/92 at 10:00 a.m., filed by defendant; order lodged.

Date	No.	PROCEEDINGS
1/27/92	103	MEMORANDUM of points and authorities in support of motion for summary judgment filed by defendant.
1/27/92	104	NOTICE OF MOTION and motion for summary judgment, returnable 3/9/92 at 10:00 a.m., filed by defendant. Proposed statement of uncontroverted facts and conclusions of law lodged. Order lodged.
1/27/92	105	MEMORANDUM of points and authorities in support of motion to dismiss for lack of subject matter jurisdiction filed by defendant
		* * * *
1/27/92	107	EXHIBITS in support of motion for summary judgment filed by defendant.
1/27/92	108	EXHIBITS in support of motion for summary judgment filed by defendant.
1/27/92	109	EXHIBITS in support of motion for summary judgment filed by defendant.
1/27/92	110	NOTICE OF MOTION and motion to amend to include claims, returnable 3/9/92 at 10:00 a.m., filed by plaintiff.
1/27/92	111	NOTICE OF MOTION and motion to return action to jury docket, returnable 3/9/92 at 10:00 a.m., filed by plaintiff.

Date	No.	PROCEEDINGS
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* * *

2/18/92 113 OPPOSITION to plaintiff's motion to amend complaint to include claims ... filed by defendant.

* * *

2/19/92 115 EXHIBITS in support of separate statement of material facts in opposition to defendant's motion for summary judgment filed by plaintiff.

2/19/92 116 SEPARATE STATEMENT OF MATERIAL FACTS in opposition to defendant's motion for summary judgment filed by plaintiff.

2/19/92 117 MEMORANDUM of points and authorities in opposition to defendant's motion for summary judgment filed by plaintiff.

2/19/92 118 OPPOSITION to motion to dismiss and declaration of William J. Schumer in support thereof filed by plaintiff.

2/19/92 119 NOTICE OF ERRATA respecting opposition to defendant's motion to dismiss filed by plaintiff.

* * *

Date	No.	PROCEEDINGS
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3/2/92 223 REPLY to Schumer's opposition to motion to dismiss filed by defendant.

3/2/92 224 EVIDENTIARY OBJECTIONS and motion to strike certain evidence submitted in opposition to (1) motion to dismiss and (2) motion for summary judgment filed by defendant.

3/2/92 225 REPLY to plaintiff's opposition to motion for summary judgment filed by defendant.

3/2/92 226 REPLY to plaintiff's opposition to statement of uncontroverted facts and conclusions of law in support of motion for summary judgment filed by defendant

* * *

3/2/92 229 EXHIBITS in support of reply to opposition to motion for summary judgment filed by defendant

* * *

3/2/92 231 REPLY to opposition to motion to amend complaint to include claims filed by plaintiff

3/9/92 232 OPPOSITION to defendant Hughes Aircraft Co.'s evidentiary objections and motion to strike certain evidence

Date	No.	PROCEEDINGS
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		submitted in opposition to Hughes' motion to dismiss and motion for summary judgment, and declarations of Linda R. Maclean and Phillip E. Benson in support thereof, filed by plaintiff.
3/11/92	233	ERRATA to memorandum of points and authorities in opposition to defendant's motion for summary judgment filed by plaintiff. * * *
11/6/91	235	ANSWER to first amended complaint filed by defendant. * * *
4/2/92	238	ORDER that plaintiff's motion to amend complaint to include claims ... is hereby DENIED, and plaintiff's motion to return action to jury docket is hereby DENIED. * * *
5/20/92	244	FINDINGS of fact and CONCLUSIONS of law. (entered 5/26/92) * * *

Date	No.	PROCEEDINGS
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5/20/92	246	ORDER that the motion to dismiss is DENIED. (entered 5/26/92) mailed copy/noticed
5/20/92	247	ORDER that Hughes' motion for summary judgment is GRANTED. (entered 5/26/92) mailed copies/noticed and MD JS-6 * * *
6/15/92	250	NOTICE OF APPEAL to the Ninth Circuit Court of Appeals from order filed on 5/20/92 filed by plaintiff. Fees paid. Party service to: Linda Maclean: James Gallagher: Vincent B. Terlep on 6/18/92. * * *
6/26/92	253	CROSS APPEAL to the Ninth Circuit Court of Appeals from order entered on 5/20/92 and order filed on 11/1/90 by defendant. Fees paid. Party service to: Mark R. Troy: Dean Francis Pace: Michael F. Hertz on 7/8/92.
6/23/92	254	AMENDED NOTICE OF APPEAL to the Ninth Circuit Court of Appeals from order filed on 4/2/92 filed by plaintiff. Party service to: Linda Maclean: McKenna & Cuneo: Vincent B. Terlep on 6/7/92. Fees waived.

Date	No.	PROCEEDINGS
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* * *

8/10/92 264 REPLY to Qui Tam plaintiff Schumer's opposition to motion for award of attorney's fees, declaration of Mark R. Troy.

UNITED STATES COURT OF APPEALS FOR THE

NINTH CIRCUIT

UNITED STATES *ex rel.*, SCHUMER,

Plaintiff-Appellant, Cross-Appellee,

v.

HUGHES AIRCRAFT CO.,

Defendant-Appellee, Cross-Appellant.

**CIVIL DOCKET FOR CASE NOS. 92-55759 AND
92-55857**

Date	PROCEEDINGS
12/10/92	First BRIEF and 15 copies filed by William J. Schumer in 92-55857, (Informal: no) of 45 pages and 1 excerpts of record; served on 11/27/92 [92-55857, 92-55759] (ft) [92-55759 92-55857]
	* * *
1/21/93	Second BRIEF and 15 copies filed by Appellee/Cross-Appellant Hughes Aircraft Co., (Informal: no) of 55 pages and 5 excerpts of record; served on 1/19/93. [92-55759, 92-55857] (sw) [92-55759 92-55857]
	* * *

Date: PROCEEDINGS

3/3/93 Third BRIEF and 15 copies filed by William J. Schumer in 92-55857, (Informal: no) of 49 pages and 5 copies of record; (minor deficiency: need red covers); served on 3/1/93 [92-55759, 92-55857] (sw) [92-55759 92-55857]

* * *

3/17/93 REPLY BRIEF and 15 copies filed by Hughes Aircraft Co., (Informal: no) of 25 pages; served on 3/15/93 [92-55759, 92-55857] (sw) [92-55759 92-55857]

* * *

8/22/95 OPINION filed: AFFIRMED IN PART, REVERSED IN PART, AND REMANDED. Each party shall bear its own costs. (Terminated on the Merits after Oral Hearing; Affirmed (in part) and Reversed (in part); Written, Signed, Published. Dorothy W. NELSON, author; Stephen R. REINHARDT; Melvin BRUNETTI.) Filed and Entered Judgment. [92-55759, 92-55857] (hh) [92-55759 92-55857]

* * *

9/12/95 PETITION for rehearing with suggestion for rehearing en banc and 40 copies filed by Appellee Hughes Aircraft Co.; 15 pages; served on 9/12/95 (Panel and All Active

Date: PROCEEDINGS

Judges) [92-55759, 92-55857] (gva) [92-55759 92-55857]

11/17/95 ORDER filed (Dorothy W. NELSON, Stephen R. REINHARDT, Melvin BRUNETTI): . . . The petition for rehearing is DENIED and the suggestion for rehearing en banc is REJECTED. [92-55759, 92-55857] (hh) [92-55759 92-55857]

11/24/95 MOTION to stay issuance of mandate pending petition for writ of certiorari and declaration of Mark R. Troy filed by Appellee/Cross-Appellant Hughes Aircraft Co.; served on 11/22/95 (to DWN) [92-55759, 92-55857] (hh) [92-55759 92-55857]

11/29/95 ORDER filed (Dorothy W. NELSON, Stephen R. REINHARDT, Melvin BRUNETTI): Hughes Aircraft Company's motion to stay issuance of mandate pending petition to Supreme Court for writ of certiorari is hereby GRANTED. [92-55759, 92-55857] (hh) [92-55759 92-55857]

COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 91-379	CONTINUATION SHEET
	Page 8 of 52 Pages
	Name of Reporting Unit Radar Systems Group
Item	
No.	Item Description

2.5.0 Method of Charging Direct Labor (Con'd)

5. Security on highly classified Special Programs is charged direct when it is program unique, customer directed and/or meets the requirements of Item 3.1.0.

Y. Other

- (1) Other direct labor, such as fabrication support, cycle inventories, inventory control, stores support, printed wiring board support, etc., is collected in pool accounts and applied as a direct charge to the product on the basis of basic direct labor charges in the department benefitting from the effort.

The pool accounts are cleared annually and new accounts established.

- (2) Direct supervision labor, and effective September 1984 secretaries to direct classified supervision, involved in multiple contract effort, is normally collected in pool accounts and applied as direct charge to government contracts, or similar cost objectives, on the basis

of direct labor charges within the supervisor's organization.

- (3) Dispatch labor involved in multiple contract effort is collected in pool accounts and is applied as a direct charge to Government contracts, or similar cost objectives, on the basis of direct labor charges within the benefitting section.
- (4) Direct labor cost incurred for engineering design, support and manufacture of common hardware is collected in a holding account and is allocated to contracts based on contemplated requirements.

* * * *

Memorandum **UNCLASSIFIED**
Northrop Corporation

In reply refer to P600-RJS-84-113
RJS: lm

CLASSIFICATION CHANGED TO
UNCLASSIFIED
AUTHORITY OF 132

BY _____ DATE 10-5-90

To B. George, ACO From: R. J. Soikkeli
15 June 1984

Subject REQUEST FOR GOVERNMENT AUDIT
ASSISTANCE - HUGHES AIRCRAFT
COMPANY - RADAR SYSTEM GROUP -
P.O. BOX 92426-LOS ANGELES, CA. 90009

Copies K. L. Thompson
R. K. Blakeney

- 1) In accordance with the provisions of DAR 3-807.9(c)(3), Northrop Advanced Systems Division (NASD) requests audit assistance against prime contract F33657-81-C-0067; Subcontract 3MS-290450 AK.
- 2) A Memorandum of Agreement to establish funding responsibilities to develop an Analog Signal Converter (ASC) and Radar Data Processor (RDP) and costs associated with initial fabrication of EDM hardware between the F-15 Radar Program Office and the AP-10 Radar Program Office at Hughes has been established without our knowledge. The major concerns are:
 - a. What is the authority to accumulate cost between a firm fixed price F-15 program and our cost reimbursable program.

- b. What are the costs ramifications for interdependence between a black world cost reimbursable type contract and a white world firm fixed price type contract.
 - c. The major concern to us is the agreement by the vendor's programs to share cost without our knowledge and concurrence. The baseline proposal negotiated with Hughes includes total cost for design and development of these units.
 - d. Journal voucher of commonality accounts, what is the method used to allocate cost between both programs.
- 3) The interdepartmental correspondence Memorandum of Agreement are referenced as follows:
- a. Reference: 2172-62483/2
Dated: 24 June 1983
Subject: Allocation of Development and Fabrication Tasks for the Analog Signal Converter
 - b. Reference: 2172-62483/1
Dated: 24 June 1983
Subject: Allocation of Development and Fabrication Tasks for the Advanced Radar Data Processor, Revision A

- 4) The cognizant DCAA and AFPRO offices are located on site. Copies of the subject Memorandum of Agreement can be obtained from Mr. D. D. Lynch, Jr., Program Manager, Special Programs.
- 5) Audit findings are requested as soon as possible to determine the cost impact to our negotiated contract and related activities.
- 6) NASD has been denied access to the subcontractor's account records.
- 7) If additional data and/or discussion on this request is required, please contact Mr. K. L. Thompson, Price/ Cost Analysis, Ext. 24975 or Mr. R. K. Blakeney Manager, Avionics Subcontracts, Ext. 24175.

/s/ R.J. Soikkeli
 R. J. Soikkeli, Manager
 Materiel Cost Management
 P600/2A - Ext. 24987

Enclosure

2/20/86

RADAR COMMONALITY

PURPOSE

This white paper has been drafted to recap the chronology of events through which the concept of commonality hardware accounts has evolved at 118A.

INTRODUCTION

An internal Memorandum of Agreement (MOA) was developed by 118A to define the common and unique tasks associated with the development of advanced radar systems and set forth funding responsibilities of each program using common items for these radar systems.

BACKGROUND

An advanced Radar Data Processor (RDP) design was conceived by 118A and development of this design was initiated by the F-15 Radar Program Office for the F-15, Multistage Improvement Program (MSIP). During December 1982, when MSIP customer funds were firmly committed and design progress was sufficient to indicate low technical and schedule risks, the Special Programs (SP) (AP-10) Program Office proposed this advanced RDP to their customer for system implementation with no technical, schedule or cost impact attendant thereto. The proposed application was approved by the Special Programs customer in January 1983. 118A then developed an internal commonality MOA which established the development tasks for this RDP, and defined the shared funding responsibilities between the MSIP and SP Program offices. This Memorandum of Agreement was approved by 118A's Senior Management, then unilaterally implemented by 118A with no customer participation. This 118A internal concept of

commonality was subsequently expanded by these two 118A program offices to include internal agreements associated with common design tasks applicable to the development of an Analog Signal Converter (ASC) Unit/ Subunit. This increased interdependency was also implemented without benefit of customer concurrence.

In September 1984, 118A's F-14 Program Office received go ahead for an upgrade of the Radar, based on MSIP technology for the F-14 aircraft. This now presented a more complex commonality issue involving three 118A programs: F-15 MSIP, Special Programs, and F-14D.

COMMON HARDWARE DEFINITIONS (14 December 1982 - 118A MOA)

The baseline concept of commonality was defined in the following context:

1. "Common hardware is defined by drawings/ specifications which establish engineering requirements and design for the fabrication, assembly, inspection and test of items for multi-program usage."
2. The 14 December 1982 Memorandum of Agreement funding responsibilities for the Radar Data Processor are as follows:
 - a. The F-15 Program will continue funding *all* development efforts for the 8 common modules.
 - b. The Special Programs Program Office would be responsible for funding unique design requirements for their program.
 - c. Costs associated with fabrication, assembly and tests of common Engineering Development Model (EDM) modules would be prorated between the using programs and

allocated in direct proportion to the quantity of modules delivered to each program.

- d. Each program is responsible for funding their own unique hardware procurements.
- e. Development, fabrication and/or procurement of the hardware required for the DSIS station for each program, including the HOST and STE Computer and respective peripherals would be funded by capital expenditures approved for each program. The common STE support software would be funded by the F-15 Program Office.

MAY 1984 INDICATED FINAL COST (IFC)

The subject IFC exercise revealed, for the first time, an extraordinary amount of cost growth for those items involved in the 118A Commonality scheme. The Radar Data Processor (RDP) reflected an unauthorized growth of \$2 million. The Analog Signal Converter (ASC) was shown to have \$4.6 million worth of unauthorized growth. The Radar Signal Processor (RSP) was shown to have unauthorized growth in the amount of \$1.2 million and the rationale furnished by the subcontractor was that these items were now in commonality accounts. When requested, no commonality plans were available from 118A's Special Programs Program Office.

DCAA AUDIT ASSIST REQUEST

On 15 June 1984, a request was made through Barbara George, ACO at 190A, for government audit assistance regarding these commonality issues. The letter was generated by Mr. R. J. Soikkeli, Manager, Materiel Cost Management. Mr. Soikkeli's letter outlined our concerns regarding the establishment of the accounts, first of all, and a

lack of visibility or apparent lack of visibility and control by the Special Programs Business Management organization.

The DCAA was unable to provide an in-depth evaluation for analysis regarding the subject.

MOA EXPANSION (February 1985)

In February 1985, the internal Memorandum of Agreement was expanded once again by 118A, to include the F-14D Program and expanded the scope of commonality subjects to be funded by all three program offices. It further revised the previous percentage sharing agreements. The expansion of tasks included such things as development task "phasing." What had previously (in 12 December 1982) been described as "development tasks" were now being described as Initial Development, Phase I, Implement-Upgrade (Phase 2) and Sustaining Engineering Phase (Phase 3), thereby extending the opportunity for funds sharing through this new phasing scheme.

MAY 1985 IFC

The commonality accounts were once again investigated and analyzed, reflecting more unauthorized growth beyond that found in the May 1984 IFC.

The Analog Signal Converter was estimated to have \$9.5 million worth of additional growth, for a total of \$14.2 million over target. The RDP was shown to have \$5.1 million worth of unauthorized growth beyond that funded in 1984 for a new total of \$7.1 million. The RSP was up \$2.9 million over 1984 for a new total of \$4.1 million in total growth. When asked for a specific plan which reflected their Statement of Work that included the application of resources as well as the schedule which phased those resources, the subcontractor could not produce it. When asked further, how they are managing their fiscal interests in the commonality management plan, they responded that, each week their proportionate percentage share (per the Memorandum of Agreement) is journaled from the common pool of costs to

their program accounts. They do not know in advance what is coming, or for what tasks they are being billed. In other words, they have no control over their participation in the commonality Memorandum of Agreement scheme.

MORE ADDED SCOPE

In June 1985, yet another revision to the 118A MOA was issued under the signatures of Mr. J. R. Rohlinger, Group Vice President and Controller, and Mr. J. R. Giacoletto, Group Vice President. This new revision includes, once again, the funding percentage responsibilities for each of the program offices mentioned previously. The revision increases the number of hardware designs that are being made common to all three programs, thereby increasing the Special Programs investment obligation without prior knowledge or concurrence by the customer.

SUMMARY

One of the glaring deficiencies in this Memorandum of Agreement scheme is that no dollar values have ever been specified, estimated, or even suggested. Only a *percentage* relationship of whatever it costs is indicated.

Through the efforts of the AP-10 Business Manager, the services of a special auditor have been provided through the SPO. The auditor is interfacing directly with the other two SPO's who are participating in these MOA's and will determine whether or not either of the other customers were

aware that they, as well as we, are completely interdependent from a design, schedule, and funding standpoint.

/s/ R. K. Blakeney
 R. K. Blakeney
 Major Subcontract Administrator
 Radar/DMS Systems Subcontracts
 P330/2A, Extension 88245

CONCURRENCE:

/s/ S. Rubenstein
 S. Rubenstein
 Avionics Controller
 B551/2A, Extension 24206

/s/ R.C. Davis
 R. C. Davis
 Radar Engineering
 E551/3E, Extension 23849

UNCLASSIFIED

DEPARTMENT OF THE AIR FORCE
 HEADQUARTERS AIR FORCE AUDIT AGENCY
 * AIR FORCE BASE, CA *

Downgraded to UNCLASSIFIED
 ON 9/5/90

Date

Authority: Northrop Security Classification
 Guide RAA9350-010
 Dated: 3 January 1989

Signature

AGS

23 Jun 1986

Report of Audit 86-5, Review of Common Advanced Radar
 Development Costs

ASD/CC ASD/Y6

1. *Background:* Hughes Aircraft Company, Radar System Group (RSG) is developing, or improving, three radar systems under full-scale development subcontracts from three DOD prime contractors: Northrop for the Advanced Technology Bomber (ATB); McDonnell Douglas for the F-15 Multi-Stage Improvement Program (MSIP), and Grumman for the F-14D. The Northrop subcontract is a cost-plus incentive fee (CPIF) contract with an original definitized value of \$155 million (current estimate is \$350 million). The McDonnell Douglas subcontract is a fixed price incentive fee (FPIF) contract with a ceiling price of \$147.3 million (this contract is currently at ceiling and projecting a loss of about \$10 million). The Grumman subcontract is an undefinitized firm fixed price (FFP) contract with a not to exceed price of \$409.2 million.

2. Each contract was negotiated as a stand alone effort. The F-15 contract was for development efforts to upgrade their existing system. The upgrade included major subunits that

were to be used on the ATB and would subsequently be used on the F-14D contract. Both the ATB and the F-14D contracts were agreed to by Northrop and Grumman respectively with the understanding that hardware common with other systems would be adapted to their system from off the shelf components. Specifically, the Analog Signal Converter (ASC); Radar Data processor (RDP), and Radar Signal Processor (RSP) will share a total of 31 common hardware items. Fourteen of the 31 hardware items will be used by all three radar systems and the other 17 items will be common to at least two systems.

3. *Scope:* This audit was requested by the Director of the ATS Program Office (ASD/Y6). The objective was to determine whether the costs accumulated by Hughes for the development of common radar hardware accurately reflected resource application and were equitably distributed among the participating programs. Our audit included review of contractual documentation at the F-15 System Program Office, discussions with technical personnel from each program office, discussions with Northrop and Hughes personnel, analysis of common cost data, and review of the internal Hughes common cost Memorandums of Agreement (MOAs). We also obtained assistance from the Defense Contract Audit Agency (DCAA) to provide assurance that charges to the common cost accounts were for actual incurred cost (i.e., there was no double/triple billings). This audit was performed during the period August 1985 to April 1986 and was conducted in accordance with generally accepted government auditing standards.

4. *(U) Overall Evaluation:* Hughes has charged development costs to all three customers that should be borne by the F-15 MSIP. The decision to distribute these costs and the ratio for the distribution were made internally by Hughes with no input from the appropriate government program offices or the prime contractors. The DCAA audit of costs accumulated in the common accounts had not been completed as of the date of this report. We will issue a supplemental report should DCAA

identify significant discrepancies in common account billings. This report and related data have been provided to the Defense Procurement Fraud Unit for further action as they deem appropriate.

5. *Findings:* Hughes had allocated \$21.4 million of common hardware development costs to the ATB and F-14D contracts. These costs were, in our opinion, more appropriately chargeable to the F-15 contract. Our analysis of the types of contractor activity charged to six general ledger accounts indicate they are used as cost collection accounts for hardware development of the ASC, RDP, RSP, associated power supplies and related sustaining engineering. As of 24 January 1986, \$43 million had been charged to these accounts (Attachment 1) with \$40 million billed (\$20.3 million to the F-15, \$5.7 million to the F-14D and \$14 million to the ATB). Hughes developed internal MOAs between the separate Hughes program managers for cost sharing as early as December 1982 and established accounts for the collection of development costs on efforts they deemed common to more than one system. However, the McDonnell Douglas (F-15) subcontract was proposed, evaluated, and negotiated as a stand alone effort. This subcontract required Hughes to design, develop, fabricate, and test the new MSIP radar and did not address any cost sharing with other programs. Therefore, it is our opinion, it was not appropriate for Hughes to allocate any of the nonrecurring development costs for the MSIP items to the other programs.

6. *(U) Auditor's Note:* The McDonnell Douglas (F-15) full-scale development contract is in an overrun condition. Every dollar of development effort charged to that contract is a dollar loss to Hughes. The allocation of development costs to the other contracts reduces their loss. McDonnell Douglas also has 1985 and 1986 *production* contracts with Hughes for MSIP radars. Hughes charged these production contracts for some of the McDonnell Douglas share of the development costs in the "common accounts" thereby further avoiding

losses on the full-scale development contract. F-15 MSIP system program office personnel stated they had identified these charges during a financial review and were pursuing an adjustment from Hughes through their prime contractor.

7. (U) *Recommendations*: ASD/CC should, with participation from the F-14D program office, establish a working group (we suggest chaired by ASD/Y6) to work out a unified position on both the adjustments required for prior charges and a new policy for all remaining efforts on development for all three radar systems. We suggest the group should be authorized to establish ground rules with Hughes for the following:

- a. Firm definition of what development efforts are chargeable to each contract.
- b. Recoupment for erroneous charges already billed.
- c. Continuous review of the overall radar development effort (we suggest the AFPRO be included in the working group and considered for the oversight role).
- d. Mutual evaluation of cost vs benefits by program on design and specification changes previously approved and any proposed in the future.

8. (U) *Management Comments*: Management comments (Attachment 2) were responsive to the findings and recommendations in this report.

/s/ J.H. Stolarow
J.H. STOLAROW
The Auditor General

2 Atch
1. Hughes Cost Distribution
2. Management comments
cc: AF/AC
AF/RD-L
AFSC/CC
ASD/TAF

(attachments omitted in printing)

AUDIT REPORT NO. 4511-7B486004 OCT 16 1986

AUDIT REPORT ON REVIEW OF COSTS
FOR THE DEVELOPMENT OF COMMON ADVANCED
RADAR EQUIPMENT
HUGHES AIRCRAFT COMPANY
RADAR SYSTEMS GROUP
EL SEGUNDO, CALIFORNIA

Under the provisions of Title 32, Code of Federal Regulations, Part 290.26(b) (2), any Freedom of Information Act requests for audit reports received by DCAA will be referred to the cognizant contracting officer for determination as to releasability and a direct response to the requester.

Contractor information contained in this audit report may be confidential. The restrictions of 18 USC 1905 should be considered before this information is released to the public.

This report may not be released to any Federal agency outside the Department of Defense without the approval of Headquarters, DCAA, except to an agency requesting the report in negotiating or administering its contract.

DEFENSE CONTRACT AUDIT AGENCY
LOS ANGELES REGION
HUGHES CORPORATE RESIDENT OFFICE
EL SEGUNDO, CALIFORNIA

FOR OFFICIAL USE ONLY

DEFENSE CONTRACT AUDIT AGENCY
 LOS ANGELES REGION
 Corporate Resident Office
 Hughes Aircraft Company
 200 N. Sepulveda Blvd. (E12/C130)
 El Segundo, CA 90245/2463

Audit Report No. 4511-7B486004 OCT 16 1986

SUBJECT: Report on Review of Costs for the
 Development of Common Advanced Radar
 Equipment
 Hughes Aircraft Company
 Radar Systems Group

TO: Mr. Timothy J. Boyan
 Audit Manager, Special Projects
 Air Force Audit Agency/AGS
 Building 252, Area C
 Wright-Patterson AFB, OH. 45433

1. Purpose and Scope of Review.

a. In accordance with your request, dated 21 march 1986, and subsequent discussions, we have performed a review of the cost incurred for the development of common advanced radar equipment. The review was performed to assure the accounting propriety of these costs.

b. Our review was performed in accordance with generally accepted governmental auditing standards and included such tests of the accounting records and other auditing procedures we considered necessary in the circumstances. It included the following related to the cost incurred for the development of the common advanced radar equipment.

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(i) Analysis of monthly direct labor cost from inception to date.

(ii) Analysis of cost adjustments.

(iii) Limited physical observations (floor-checks) of labor recording practices and review of work assignment documents of certain employees who were charging time to the subject effort. Verification of the employees' time card entries to the labor distribution records.

(iv) Coordination with the Air Force Plant Representative Office (AFPRO) technical representatives to determine the validity of the assumptions regarding whether the F-15 contract should bear the full development costs and to determine the reasonableness of the methodology developed by the company for the allocation of the costs to the F-15, F-14D, and the special project programs.

(v) Analysis of the contractor's Cost Accounting Standard disclosure statement to determine its adequacy.

2. Background Information.

The contractor established several holding accounts to accumulate the costs for the development of the common advanced radar equipment. These costs are then allocated monthly to the three programs based on internal agreements made among the three Hughes program managers to share the development costs of the common equipment.

3. Results of Review.

a. Our floorcheck review disclosed that an employee working on an IR&D project was charging to a management pool and having some of his time allocated to the holding accounts. This mischarging occurred from 31 January 1986 until 26 September 1986 and totaled 269.5 hours at a cost impact of \$21,861. The contractor has agreed to credit the holding accounts and debit it to one of its IR&D accounts.

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b. In addition to the mischarging of 269.5 hours, our review disclosed minor deficiencies in timekeeping procedures which the contractor agreed to correct.

c. The contractor's disclosure statement states, "Direct labor cost incurred for engineering design, support and manufacturing of common hardware is collected in a holding account and is allocated to contracts based on contemplated requirements." It also states, "Direct material cost incurred in the manufacture of common hardware is collected in a holding account and allocated to contracts based on requirements and/or stock transfers." Both the AFPRO and DCAA had found no basis to question the adequacy of the disclosure statement nor compliance with the cost accounting standards.

d. The AFPRO's technical report (See exhibit), which we received on 10 October 1986, states the following:

(1) Based on review of contractual documents, it is their opinion that the F-15 program was intended to bear the full cost of developing any and all hardware used in the F-15 MSIP radar. There are no statements in the documentation for the other two programs which indicate that they will share the burden of development costs.

(2) The facts do not seem to agree with Hughes' assertion that it is "obvious" that the F-15 program was never intended to pay the full cost of the gate array technology.

(3) The wording in the F-14D cost proposal appears to be saying to Grumman Aircraft Company, the prime contractor for the F-14D program, that the development costs for certain parts have already been paid and that Grumman will only have to pay for the production/procurement costs of those parts. However, the internal agreement seems to say that those parts will be developed and the cost should be borne by all using programs.

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(4) The entire development engineering to the MSIP radar was negotiated at \$57.9 million. The sharing of 31 parts among three programs has already cost over \$25 million or almost half the cost to develop the MSIP radar. This appears to be a disproportionately high price to pay for the development of so few parts.

e. The contractor's records indicate the incurrence of about \$43 million of cost for the development of the common advanced radar equipment as of 24 January 1986.

f. Our review disclosed no contracted sharing of these common items. Further, we know of no program office direction for this sharing. However, you advised us that you were coordinating this question of sharing with the applicable DOD program offices. Therefore, until the propriety of this sharing question has been resolved, we are unable to reach a definitive conclusion regarding the appropriateness of these charges.

4. Concluding Remarks.

a. Audit matters were discussed with the contractor's representative, Mr. Sam Bulucas, Manager - Cost Accounting, during the course of the review. All questions of fact were resolved.

b. If additional audit services and/or accounting counsel are required concerning this report, please contact Mr. Earnest Knott at (213) 414-6590.

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c. Use of this audit report information for purposes other than those immediately intended is not recommended without prior consultation with this office regarding its applicability.

DEFENSE CONTRACT AUDIT
AGENCY

/s/ Dudley P. Slater
DUDLEY P. SLATER,
Resident Auditor

Copy furnished
Mr. Tom Tremper, PACO, Hughes AFPRO
RAMD-4

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AUDIT REPORT NO. 4511-7B486004S1 JUN 02 1987

SUPPLEMENTAL AUDIT REPORT ON REVIEW
OF COSTS FOR THE RADAR SYSTEMS GROUP
COMMONALITY POOL
HUGHES AIRCRAFT COMPANY
RADAR SYSTEMS GROUP
EL SEGUNDO, CALIFORNIA

Under the provisions of Title 32, Code of Federal Regulations, Part 290.26(b) (2), any Freedom of Information Act requests for audit reports received by DCAA will be referred to the cognizant contracting agency for determination as to releasability and a direct response to the requestor.

Contractor information contained in this audit report may be confidential. The restrictions of 18 USC 1905 should be considered before this information is released to the public.

This report may not be released to any Federal agency outside the Department of Defense without the approval of DCAA Headquarters, except to an agency requesting the report in negotiating or administering its contract.

DEFENSE CONTRACT AUDIT AGENCY
HUGHES CORPORATE RESIDENT OFFICE
HUGHES AIRCRAFT COMPANY
EL SEGUNDO, CALIFORNIA

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DEFENSE CONTRACT AUDIT AGENCY
 LOS ANGELES REGION
 Corporate Resident Office
 Hughes Aircraft Company
 200 N. Sepulveda Blvd. (E12/C130)
 El Segundo, CA 90245/2463

AUDIT REPORT NO. 4511-7B486004S1 JUN 02 1987

SUBJECT: Supplemental Report on Review of Costs for the
 Radar Systems Group Commonality Pool
 Hughes Aircraft Company
 Radar Systems Group
 El Segundo, California 90245

TO: Air Force Plant Representative Office
 Attention: William D. McKinney, Capt, USAF
 Chief Pricing
 Section A
 Hughes Aircraft Company
 El Segundo, California 90245

1. Purpose and Scope of Audit.

a. In accordance with your 19 May 1987 request, we verified the costs incurred by the Radar Systems Group charged to its Commonality Pool. The review was performed to verify the total pool charges incurred for the period from February 1986 to April 1987.

b. The review was performed in accordance with generally accepted government auditing standards and included such tests of accounting records and such other auditing procedures we considered necessary in the circumstances. This review included verification of labor, material, and other direct costs accumulated in common general ledger accounts. These costs were then traced to

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general ledger accounts within the F-14, F-15, F-18, and AHEP Programs. A detailed review of these cost flows was not performed due to insufficient time made available to issue this report.

2. Background Information.

The Radar Systems Group Commonality Pool consists of several general ledger accounts used to accumulate costs for the development of common advanced radar equipment. These costs are then allocated to the four programs based on internal agreements made among the Hughes program managers to share in the costs of this common equipment.

3. Results of Audit.

a. Our review disclosed that the contractor's records show \$32,215,600 has have been incurred by the Radar Systems Group Commonality Pool during the period from February 1986 to April 1987. This total cost was allocated to the four programs participating in this pool as follows:

F-14	\$ 11,632,567
F-15	13,055,891
F-18	352,390
AHEP	<u>7,174,752</u>
TOTAL POOL	<u>\$ 32,215,600</u>

b. It should be noted that the above amounts do not include Assist Division's overhead or general and administrative expenses. The contractor stated that these costs were not included due to time constraints. The contractor will update the pool expenses and submit the update to Captain McKinney.

4. Concluding Remarks.

a. If accounting counsel or additional audit services are required concerning this report, please contact Mr. Dale Johnson of this office, at (213) 414-5010.

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b. The information contained in this audit report should not be used for purposes other than that immediately intended without prior consultation with this office regarding its applicability.

c. Audit matters were discussed with the contractor's representative, Mr. E. S. Balucas, Manager - Cost Accounting, during the course of the review.

DEFENSE CONTRACT AUDIT
AGENCY

/s/ Dudley P. Slater
DUDLEY P. SLATER,
Resident Auditor

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DEFENSE CONTRACT AUDIT AGENCY NOTICE OF CONTRACT COSTS SUSPENDED AND/OR DISAPPROVED		PAGE 1 OF 1 PAGE(S)	
TO: (Name and Address of Contractor) WITHHELD	Contract Number (1) F33657-81-C-0067	Notice Number (2) 001	
	Disbursing Officer USAF/AFSC/ASD ASPA PROGRAM OFFICE WRIGHT PATTERSON AFB, OH	Contract Administrative Office WITHHELD	
<p>1. This notice is issued pursuant to the authority of DoD Directive §5105.34, as implemented by the Federal Acquisities Regulations and DoD Far Supplement. It constitutes notice of costs suspended and/or disapproved incident to the audit of contractor costs incurred under referenced contract(s). Description of items and reasons for the actions are stated below.</p> <p>2. SUSPENDED COSTS, as referred to herein are costs which, for the reasons stated below, have been determined by the undersigned to be inadequately supported or otherwise questionable, and not appropriate for reimbursement under the contract terms at this time. Such costs may be determined reimbursable after the contractor provides the auditor additional documentation or explanation as specified below.</p> <p>3. DISAPPROVED COSTS, as referred to herein, are costs which, for the reasons stated below, have been determined by the undersigned to be unallowable, that is, not reimbursable under the contract terms.</p> <p>4. If the contractor disagrees with this/these determinations, the contractor may (1) request in writing the cognizant contracting officer to consider whether the unreimbursed costs should be paid and to discuss his or her findings with the contractor and/or (2) file a claim under the "Disputes" clause of this contract(s).</p> <p>5. The auditor will submit copies of the acknowledged notice to the cognizant disbursing officer for appropriate action and to the cognizant contracting officer.</p>			
DCAA AUDITOR	Date of Notice (6) 12/10/87	Address WITHHELD	Signature (illegible)
CONTRACTOR'S ACKNOWLEDGEMENT OF RECEIPT - The contractor or its authorized representative shall acknowledge receipt of this notice to the DCAA auditor.			

Date of Receipt (7) 10 December 1987		Name and Title of Authorized Official (7) J. Gaston Kent, Jr.	Signature (7) (illegible)
ITEM NO.	(8) Description of Items and Reasons for Action	Amount of Costs	
		Suspended	Disapproved
1.	Costs reimbursed to subcontractor 118A are suspended at the direction of the Administrative Contracting Officer in accordance with DAR 3-809(c)(1). Government representatives at the subcontractor site have taken exceptions to the subcontractor's allocation methodology used in allocating gate array development costs. The subcontractor accumulated development costs in a common pool and divided the costs among various programs based on subcontractor internal management agreements when, in fact, all development costs were contractually covered in a contract other than one issued by (Withheld). This suspension will remain in effect until such time as the ACO is able to determine the allocability or allowability of these costs as stated in AFPRO letter TM-87-161 dated 11/9/87.	\$11,600,000	

UNCLASSIFIED

DEFENSE CONTRACT AUDIT AGENCY NOTICE OF CONTRACT COSTS SUSPENDED AND/OR DISAPPROVED		PAGE 1 OF 1 PAGE(S)
TO: (Name and Address of Contractor)	Contract Number (1) F33657-81-C-0067	Notice Number (2) 001
Northrop Corporation Advanced Systems Division 8900 E. Washington Blvd. Pico Rivera, CA 90660-3737	Disbursing Officer USAF/AFSC/ASD (3) ASPA PROGRAM OFFICE WRIGHT PATTERSON AFB, OH	Contract Administrative Office (4) DET 31, AFPRO PICO RIVERA, CA 90660
<p style="text-align: center;">45433</p> <p>1. This notice is issued pursuant to the authority of DoD Directive §5105.34, as implemented by the Federal Acquisitions Regulations and DoD Far Supplement. It constitutes notice of costs suspended and/or disapproved incident to the audit of contractor costs incurred under referenced contract(s). Description of items and reasons for the actions are stated below.</p> <p>2. SUSPENDED COSTS, as referred to herein are costs which, for the reasons stated below, have been determined by the undersigned to be inadequately supported or otherwise questionable, and not appropriate for reimbursement under the contract terms at this time. Such costs may be determined reimbursable after the contractor provides the auditor additional documentation or explanation as specified below.</p> <p>3. DISAPPROVED COSTS, as referred to herein, are costs which, for the reasons stated below, have been determined by the undersigned to be unallowable, that is, not reimbursable under the contract terms.</p> <p>4. If the contractor disagrees with this/these determinations, the contractor may (1) request in writing the cognizant contracting officer to consider whether the unreimbursed costs should be paid and to discuss his or her findings with the contractor and/or (2) file a claim under the "Disputes" clause of this contract(s).</p>		

5. The auditor will submit copies of the acknowledged notice to the cognizant disbursing officer for appropriate action and to the cognizant contracting officer.			
DCAA AUDITOR	Date of Notice (6) 12/10/87	Address Resident Auditor, DCAA (6) 8900 E. Washington Blvd., M/S 3M Pico Rivera, CA 90660-3737	Signature (illegible)
CONTRACTOR'S ACKNOWLEDGEMENT OF RECEIPT - The contractor of the authorized representative shall acknowledge receipt of this section to the DCAA auditor.			
Date of Receipt (7) 10 December 1987	Name and Title of Authorized Official (7) J. Gaston Kent, Jr. Vice President Contract & Pricing	Signature (7) (illegible)	
ITEM NO.	(8) Description of Items and Reasons for Action	Amount of Costs	
		Suspended	Disapproved
1.	Costs reimbursed to subcontractor 118A are suspended at the direction of the Administrative Contracting Officer in accordance with DAR 3-809(c)(1). Government representatives at the subcontractor site have taken exceptions to the subcontractor's allocation methodology used in allocating gate array development costs. The subcontractor accumulated development costs in a common pool and divided the costs among various programs based on subcontractor internal management agreements when, in fact, all development costs were contractually covered in a	\$11,600,000	

contract other than one issued by Northrup Advanced Systems Division. This suspension will remain in effect until such time as the ACO is able to determine the allocability or allowability of these costs as stated in AFPRO letter TM-87-161 dated 11/9/87.	
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DCAA Form 1
August 1987

Supersedes February 1983 Edition of DCAA For 1

CLASSIFICATION CHANGED TO:
UNCLASSIFIED
BY AUTHORITY OF [UNREADABLE]
[UNREADABLE]
BY /s/ DATED: [UNREADABLE]

Session No. 88-03-11-402

CONTACT REPORT

Meeting Date: 10 March 1988

DCAA Attendees: Dudley Slater, John Sharenko

Hughes Attendees: E. Levenson, H. Stone

1. Two documents were presented for DCAA review:
Extracts from Engineering Progress Letters
indicating chronology of events (86-11-21-009)

Letter 88-02-04-400 prepared by Bob Long in
response to customer's "Form 1" Notice of
Disallowance.

2. Following review of the documents, Howard reviewed
the chronology of events:

Apr 1981	Began Special Programs Contract
Jan 1982	AHEP FSD development began
Dec 1982	Established design spec on AHEP ASC
Jan 1983	Began AHEP gate array design
Jun 1983	MSIP/SP Commonality MOA - ASC
Jan 1984	Modification to F15 MSIP Contract to incorporate gate array technology into the F15 ASC.

DCAA requested an unclassified listing of the
chronology of events.

3. DCAA developed the following line of questioning:
 1. When MOA was struck between Special
Programs and F15, what transpired with each
respective customer (between the buying
offices)?
 2. How was MSIP Gate Array work bid? Did the
proposal contemplate commonality?

3. If F-15 MSIP Contract provides for full
development costs and if a portion of those
costs were subsequently shared with Special
Programs, then there should be a contract
modification reducing the price of the F15
contract. Where is that credit adjustment?
4. Same line of questioning re. ARDP. Need to
determine what is on contract.
5. Need to trace each of the 30-or-so MOA's for
common parts. Requested copy of each MOA
by part number and by date.
4. Edie asked DCAA for breakout of \$11.6M
disallowance. DCAA has not seen breakdown of the amount
but believes the \$11.6M amount stems from a modification to
the F15 contract to perform the gate array work.

ACTION ITEMS FOR HUGHES:

1. Provide unclassified "chronology of events"
2. Provide copy of MOA by P/N and date for each
common item.
3. Determine what was in respective gate array
bids re. commonality. Determine whether
credit adjustment modifications for common-
ality exist.

No completion date for these action items was discussed.
DCAA recognized that these requests were directed to Hughes
in general and interviews with the appropriate other-program
people would have to be orchestrated.

AUDIT DISALLOWANCE - COMMONALITY

<u>Date</u>	<u>Accession No.</u>	<u>Discussion</u>
83/04/25	None	F15 MSIP Proposal for new Gate Array 038 and 044 units.
84/01/03	None	F15 MSIP Purchase Order w/M001 Modification dated 24 January 1984
84/06	None	F-15 MSIP Phase II (FSD) WBS Dictionary
86/07/01	86-07-01-001 (S)	Received ltr from Colonel Scofield with draft Audit Report 86-5.
86/07/30	None	File containing documents submitted to the customer during 1982-1983 re. Commonality Audit.
86/09/09	None	Letter from John Wilson to AFPRO Colonel Bottomley with comments on Audit Report 86-5.
86/11/21	86-11-21-009	Collection of excerpts from Engineering Progress Letters indicating evolving maturity of gate array design.
86/11/24	None	Letter from John Wilson to AFPRO Colonel Bottomley with follow-up comments on Commonality Discussions
87/11/24	87-11-24-006	Received DACOM (P323-BEM-87-985) advising Form 1 will be issued - some details provided in DACOM
87/11/30	87-11-30-005 (S)	Letter to Customer acknowledging receipt of 87-11-24-006. Takes exception to cost suspension/disapproval and advises formal response will be submitted by 7 January 1988. Includes copy of Audit Report 86-5 and Hughes letters of 9 Sept 86 and 24 Nov 86.

87/11/30	87-12-01-007	Received letter P323-BEM-87-1000 advising suspension of costs is imposed and requesting a Hughes check for \$11.5M.
87/12/16	87-12-16-001	Received DACOM 118A87-712 (P323-BEM-87-1042) advising immediate suspension of costs - debits to FSD invoices. Customer has received Form 1.
87/12/18	87-12-18-006	Received P323-BEM-87-1044, DCAA Form 1.
88/01/05		Edie called Walter to request copy of AFPRO letter TM-87-161 dated 9 Nov 87 (cited in Form 1). Walter will have to check with his lawyer on this.
		Edie also requested a 30 day extension to respond to Form 1 notice of 87-11-24-006. Walter agreed to extension through first week in February and agreed that I could confirm his concurrence in writing.
88/01/07		Memo from Karl Abert to John Wilson requesting assistance in obtaining AFPRO letter TM-87-161 and identification of specific elements of cost making up the \$11.6M amount.
88/01/07		Edie called Captain Hamilton at AFPRO to request AFPRO letter TM-87-161. Cpt. Hamilton advised he will try to find the letter for us.
	88-01-11-402	Letter to Captain Hamilton confirming request for AFPRO letter TM-87-161.
88/01/07	88-01-11-403	Letter to customer confirming request for AFPRO letter TM-87-161 and requesting identification of specific cost elements of the \$11.6M withhold.
	88-01-11-404	Letter to customer confirming extension of Form 1 response date to 5 February 1988.

88/01/19 Joe called Walter to follow up on request for cost element breakdown of \$11.5M withhold. Walter gave Joe several GLA and cost account numbers.

Bob Long was not able to match the cost account numbers from Walter with those in the DCAA Audit Report. Edie called Walter - the cost accounts were Walter's "best guess" based on his review of the 1985 IFC. He didn't have any other relevant data.

88/01/20 88-01-20-400 DACOM and Letter to customer reiterating request for cost element breakdown of \$11.6M withhold and advising lack of receipt of this breakdown may impact Hughes' ability to respond by 5 February to Form 1.

88/01/25 Edie called Cpt. Hamilton for status on request for copy of AFPRO letter TM-87-161. Cpt. Hamilton had located the document and requested a copy be DACOM'd to him. He will follow up on his request.

88/02/04 88-02-04-400 Letter to customer responding to Form 1. Includes Statement of Claim and Certification

88/03/08 88-03-08-006 Copy of DACOM from customer DCAA to HAC resident auditor requesting assist audit. Includes customer letter dtd 9 December 87 (X000-87-038) to AFPRO acknowledging AFPRO ltr TM-87-161 dated 13 Nov 87 and reiterating audit request.

88/03/07 None Meeting with Customer to review F15 MSIP WBS Dictionary, F15 MSIP Proposal for M001 re. gate array technology and F15 MSIP Contract with Modification for M001. See contact report 17 March 88.

88/03/10 None Meeting with DCAA. See contact report 11 Mar 88.

88/03/11 88-03-11-402 Contact Report of meeting 10 March 88 during which DCAA reviewed the 4 February 88 letter to customer and discussed chronology of events with Howard Stone.

[illegible]

**DEFENSE CONTRACT AUDIT AGENCY
LOS ANGELES REGION**

**Corporate Resident Office
Hughes Aircraft Company
200 N. Sepulveda Blvd. (E12/C130)
El Segundo, CA 90245/2463**

14 June 1988

Mr. J.R. Rohlinger, Vice President - Finance
 Radar Systems Group
 Hughes Aircraft Company
 RS, Bldg. R-1, M/S D-411
 El Segundo, Calif. 90245

Subject: Cost For Development of Common Advanced Radar Equipment

Dear Mr. Rohlinger

To further assist us in our review, please provide comments and/or additional supporting data as follows:

1. Based on my examination of the revised disclosure statements (D/S) that were provided as per our request, it appears that for period 1980 thru January 1984 the Non-Manufacturing Division, material and labor that was subject to commonality accounting), was *not* a disclosed accounting practice. Please concur, or provide appropriate comments and a copy of cover sheet and applicable pages of the D/S for the subject period. The list of commonality pools provided by you indicates that cost accumulation for Non-Manufacturing effort was opened in C.I.S. in April 1980.

2. Included in the D/S's submitted was a copy of the cover sheet for the revised statement dated 3 January 1983. However, since only the cover sheet was included for this statement, we are unable to determine the relevancy of this statement to the commonality accounting.

3. The following pages were inadvertently omitted. (Appears to have been two sided pages, with only one side copied) Please provide copies of the following *pages* only:

- a) Hughes Program Instructions NO. 6-8-10, dtd 11-25-86, *p.2*
- b) " " " " No. 6-11-10 & Att. 1, dtd 8-26-86, *even numbered pages.*
- c) " " " " NO. 6-11-12 dtd 3-4-86, *even numbered pages.*

4. Please provide a schedule showing total actual booked cost to all 10 of the commonality pools and a schedule showing the subsequent amounts allocated to each program *for the period 1 January 1986 thru May 1988*. This schedule will be used by us for materiality analysis. Based on this analysis, detail test cheking may be performed using one or more of the commonality pool cost, prior to allocations, and after allocations, as base amounts for detail test checking. Please identify the Phase in which pool costs represents for stated time period.

5. The local AFPRO has requested our report be provided by 9 July 1988. If you should determine that there will be delays in providing the data requested. Please notify me at the (213) 414-6512.

/s/ Van Laurant III
VAN LAURANT III
DCAA AUDITOR

**HUGHES
AIRCRAFT COMPANY
RADAR SYSTEMS GROUP**

8 July 1988

In Reply Refer To: 88H/20-20/424

Subject: Cost for Development of Common
Advanced Radar Equipment

To: Defense Contract Audit Agency
Hughes Aircraft Company
Attn: Van Laurant III, Auditor
Building E12, Mail Station C130
El Segundo, CA 90245

Reference: Your letter dated 14 June 1988

The information requested is submitted in the following paragraphs:

1. Although Commonality was discussed in considerable detail with the AFPRO/DCAA starting 1978, no CAS Disclosure Statement change for commonality accounting was submitted by RSG Non-Manufacturing prior to 1984 because of the lowlevel (*immateriality*) for commonality at that time. It was during the latter part of year 1983 that RSG, at the request of the DCAA/AFPRO, determined that a CAS Disclosure Statement change was in order.

2. The CAS Disclosure Statement change to include commonality accounting for RSG non-manufacturing (Engineering) was included in our Disclosure Statement revision dated 2 January 1984 (submitted 3 July 1984), which was approved by PACO on 1 April 1985 (copy attached).

NOTE: The delay in submitting the 2 January 1984 Disclosure Statement until 3 July 1984 was due to consoli-

dating the individual manufacturing and RSG non-manufacturing CAS Disclosure Statement(s) into a single RSG CAS Disclosure Statement.

3. As requested, attached are complete sets of Hughes Program Instructions. Included are numbers 6-8-0, 6-11-10, and 6-11-12.

HUGHES AIRCRAFT COMPANY

/s/ J.R. Rohlinger

J. R. Rohlinger
Group Vice President - Finance
Radar Systems Group

/bg

Attachments

Audit Report No. 4511-8B179009

27 September 1988

AUDIT REPORT ON REVIEW OF ACCOUNTING
PRACTICES FOR THE COMMONALITY COST POOLS
RADAR SYSTEMS GROUP
HUGHES AIRCRAFT COMPANY
EL SEGUNDO, CALIFORNIA

The Defense Contract Audit Agency has no objection to release of this report, at the discretion of the contracting agency, to authorized representatives of Hughes Aircraft Company.

Under the provisions of Title 32, Code of Federal Regulations, Part 290.26(b)(2), any Freedom of Information Act requests for audit reports received by DCAA will be referred to the cognizant contracting agency for determination as to releasability and a direct response to the requester.

Contractor information contained in this audit report may be confidential. The restrictions of 18 USC 1905 should be considered before this information is released to the public.

This report may not be released to any Federal agency outside the Department of Defense without the approval of Headquarters, DCAA, except to an agency requesting the report in negotiating or administering its contract.

DEFENSE CONTRACT AUDIT AGENCY
SOUTHWESTERN REGION
HUGHES CORPORATE RESIDENT OFFICE
HUGHES AIRCRAFT COMPANY
EL SEGUNDO, CALIFORNIA

FOR OFFICIAL USE ONLY

DEFENSE CONTRACT AUDIT AGENCY
SOUTHWESTERN REGION
Corporate, Resident Office
Hughes Aircraft Company
200 N. Sepulveda Blvd. (E12/C130)
El Segundo, CA 90245/2463

Audit Report No. 4511-8B179009 27 September 1988

SUBJECT: Audit Report on Review of Accounting
Practices For The Commonality Cost Pools
Hughes Aircraft Company
Radar Systems Group
El Segundo, California

TO: Principal Administrative Contracting Officer
(Mr. Thomas Tremper)
Air Force Plant Representative Office
Hughes Aircraft Company
El Segundo, California

1. Purpose and Scope of Review

a. As requested in your letter dated 25 May 1988, we have reviewed Hughes Aircraft Company Radar System Group's (RSG) commonality accounting practices. The purpose of the review was to determine i) whether the commonality accounting practices are part of RSG's disclosed accounting practices, ii) whether these commonality accounting practices are considered adequate for the allocation of common radar costs, iii) if adequate, whether HAC has consistently complied with these practices in both accounting for these costs in estimating prior, current and future business, and iv) to obtain and verify the total pool charges incurred in the commonality pools and the subsequent allocation to the various programs through May 30, 1988.

b. The review was performed in accordance with generally accepted government auditing standards and included such tests of the contractor's data and records and such other auditing procedures we considered necessary in the circumstances. It included the following specific steps related to the commonality cost accumulation and allocation:

(1) Review of the contractor's Disclosure Statement addressing the initial adoption of the commonality accounting practice, and all applicable revisions.

(2) Review of all written operating instructions and practices on commonality.

(3) Review of all current Memorandums of Agreements (Cost Sharing Provisions) applicable to the ten (10) Commonality Pools.

(4) A detail review of randomly selected labor, material, ODC, and burden transactions recorded under GLA No. NA67. Our review included both cost accumulation and cost allocation transactions.

(5) A review of the contractor's commonality accounting practices in conjunction with bid proposals.

(6) The determination and verification of total costs incurred-to-date for the ten commonality pools, and the total cost allocations-to-date as of May 30, 1988.

2. Circumstances Affecting the Review

On 16 October 1986, we issued Audit Report No. 4511-7B486004, Subject: Audit Report on Review of Costs For The Development of Common Advanced Radar Equipment. The report also included the findings of the resident Air Force Plant Representatives technical review. We disclosed in our report that the contractor established holding accounts to accumulate the costs for the development of the common advanced radar equipment. These costs were then allocated monthly to the F-15, F-14D, F-18 and the AHEP programs based on internal memorandums of agreements made

between the applicable Hughes program managers to share the development costs of the common equipment. Our review disclosed no contracted sharing agreement of these common items. Because we were unable to determine the existence of any program office directions for this cost sharing, we were unable to reach a definitive conclusion regarding the appropriateness and accuracy of these allocations to the various programs.

3. Results of Audit Review

a. Our review disclosed that the contractor's Disclosure Statement and related commonality accounting practices do not adequately describe the contractor's cost accounting practices. Accordingly, we recommend the contractor submit a revised Disclosure Statement on its commonality accounting. Also, during our review we identified certain of the contractor's revised practices which we believe represent a potential noncompliance with Cost Accounting Standard 401. The deficiencies identified are as follows:

(1) Item No. 2.5.0 Method of Charging Direct Labor - Continuation Sheet Page 8 of 60 - Statement dated 17 February 1987

The contractor's disclosed accounting practice for commonality cost is too general. The disclosed practice does not give the reader an adequate description of its methods of allocation and cost sharing arrangements.

Our review indicates that there are presently ten commonality pool accounts used for cost accumulation and ten relief accounts used for cost allocations. The contractor's Memorandums of Agreement defines the common work tasks and establishes the cost sharing of each participating program with respect to a given common work task. We recommend that the contractor include in its disclosure statement a current, accurate, and complete description of each cost sharing practice used for the allocation of common radar costs. Also any subsequent changes to the disclosed practices shall require

the contractor to submit a formal disclosure statement amendment.

(2) Potential Noncompliance-CAS 401

CAS 401.40(b) requires that cost estimates for proposal purposes shall be presented in such a manner and in such detail that any significant cost can be compared with actual cost accumulated and reported. Our review indicates that the contractor simply does not address commonality cost as an element separate and distinct from other unique effort in its bid proposal estimates. Accordingly, program actuals used as a basis for the proposal estimates do not show a break-down of the common vs unique actual cost. Because proposed commonality costs cannot be compared to the recorded cost, it appears that the contractor has a potential CAS 401 noncompliance. We recommend that the contractor's actual costs which are used as a basis for the proposal estimates show the break-down of actual cost between common vs unique.

b. Except as noted below, our review of selected transactions representing both cost accumulation and allocation transactions disclosed no basis for taking exception to the contractor's current cost accumulation and cost allocation accounting practices.

Our review disclosed that total relief costs allocated-to-date exceeds total costs incurred-to-date for three of the ten pool accounts. Audit inquiries disclosed that the over-allocation resulted from double accounting. The contractor asserts that the double accounting resulted from "changes in allocation matrixes occurring subsequent to the actual periods of cost incurrence". The contractor has agreed to make adjusting correction entries in the September 1988 accounting period. Please refer to Attachment 1, for a schedule showing comparison of total costs incurred-to-date with total relief costs allocated-to-date. Attachment 2 shows the schedule of total commonality pool costs allocated by program.

4. Disposition of Audit Results

a. During the course of our review, audit matters were discussed with Mr. J. Rohlinger, Vice President, Finance, Mr. Sam Bulucas, Manager Cost Accounting, Ms. Jackie Davis, Head, Cost Accounting and Mr. William Amis, Manager, Commonality Hardware.

b. Accounting counsel or additional audit services required may be obtained by contacting Mr. Frank Moore or Mr. Van Laurant III of this office, at (213) 414-6504. Additional audit support should be requested if required.

DEFENSE CONTRACT AUDIT
AGENCY

/s/ Dudley P. Slater
DUDLEY P. SLATER,
Resident Auditor

* * * *

Audit Report No. 4511-8B179009 Attachment 1

Page 2 of 2

Explanatory Note

Our review disclosed that total costs allocated-to-date exceeds total costs incurred-to-date for three of the ten pool accounts. Audit inquiries disclosed that the over-allocation resulted from double accounting. The contractor asserts that the double accounting resulted from "changes in allocation matrixes occurring subsequent to the actual periods of costs incurrence". As stated in paragraph 3.b. of the report narrative, the contractor has agreed to make adjusting correction entries in the September 1988 accounting period. In addition, the local AFPRO will be provided a monthly schedule showing total incurred-to-date and total allocated-to-date relief costs, for analysis as considered necessary.

DEPARTMENT OF THE AIR FORCE
AF PLANT REPRESENTATIVE OFC. (DET 36) AF
CONTRACT MGT DIV (AFSC)
HUGHES AIRCRAFT COMPANY, P.O. BOX 92463
LOS ANGELES, CA 90009

7 November 1988

Mr J. R. Rohlinger
Radar Systems Group
Hughes Aircraft Company
R1/MS/D411

Dear Mr Rohlinger

The attached 27 September 1988 DCAA Audit Report No. 4511-88179009 cites a potential CAS 401 noncompliance. The cited noncompliance pertains to the commonality accounting practices for allocation of Common Radar Costs at Radar System Group. Before I make a determination on this potential CAS 401 noncompliance, I request your concurrence with DCAA's audit finding or submit rebuttal evidence within 30 days after receipt of this letter. If you concur with the cited noncompliance please submit your corrective action plan. If no answer is received within 30 days, I intend to issue a determination of noncompliance with CAS 401.

/s/ Thomas R. Tremper
THOMAS R. TREMPER
Principal Administrative
Contracting Officer

1 Atch
DCAA Audit Rpt
No4511-8B1790
dtd 27 Sept 1988

cc: DCAA/Mr D. Slater
DCAA/Mr R. Barr

Dean Francis Pace
Wm. John Kennedy
PACE AND KENNEDY
Suite 1600 Century City
1901 Avenue of the Stars
Los Angeles, California 90067
(213) 277-2900

Attorneys for Plaintiff

UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA)
EX REL. WILLIAM J. SCHUMER,)
	) CIVIL ACTION
Plaintiff,	) CV 89-0390 MR
)
v.)
)
HUGHES AIRCRAFT)
COMPANY,	) DISCLOSURE
	) STATEMENT
Defendant	) PURSUANT TO
	) 31 U.S.C. 3730 (B)(2)
)

TO THE UNITED STATES ATTORNEY, CENTRAL
DISTRICT OF CALIFORNIA:

NOW COMES RELATOR, WILLIAM J. SCHUMER, and respectfully files a Disclosure Statement with the United States Attorney for the Central District of California incident to the Qui Tam action *United States of America ex rel. William J. Schumer v. Hughes Aircraft Company*, USDC Civil Action CV89-0390 MRP, pursuant to 31 U.S.C. 3730(b)(2).

* * * *

Dated: January 17, 1989

Respectfully submitted,

PACE AND KENNEDY

By /s/ Dean Francis Pace
 Dean Francis Pace
 Attorneys for Plaintiff

Dean Francis Pace
 Wm. John Kennedy
 PACE AND KENNEDY
 Suite 1600 Century City
 1901 Avenue of the Stars
 Los Angeles, California 90067
 (213) 277-2900

Attorneys for Plaintiff

UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA)	
EX REL. WILLIAM J. SCHUMER,)	
	)	CIVIL ACTION
Plaintiff)	
)	
v.)	
	)	COMPLAINT FOR
HUGHES AIRCRAFT COMPANY,	)	VIOLATION OF THE
	)	FALSE CLAIMS ACT
Defendant)	
	)	DEMAND FOR JURY
_____	)	TRIAL

JURISDICTION

1.

Jurisdiction is predicated upon federal subject matter jurisdiction pursuant to 31 U.S.C. 3732(a).

VENUE

2.

Venue in the Central District Court for the Central District of California is predicated upon 31 U.S.C. 3737(a). Defendant HUGHES AIRCRAFT COMPANY and its RADAR SYSTEMS GROUP, the entity charged herein with violations of 31 U.S.C. 3729 et seq., now and at all times alleged herein had its principal place of business in the Central District of California. The violations of 31 U.S.C. 3729 et seq. alleged herein occurred in the Central District of California. Plaintiff has sustained the damages alleged herein within the Central District of California.

PARTIES

3.

Defendant HUGHES AIRCRAFT COMPANY (hereinafter "HUGHES"), is and was at all times alleged herein a California corporation with its principal place of business located within the Central District of California.

4.

HUGHES RADAR SYSTEMS GROUP (hereinafter "RSG"), is and was at all times alleged herein a division of HUGHES, charged with the principal performance of subcontracts and prime contracts between HUGHES and the United States Government as hereinafter alleged.

5.

Plaintiff is informed and believes and thereupon alleges, that at all times alleged herein, Defendant HUGHES had knowledge of, acquiesced in, authorized, directed, and/or ratified the conduct of the officers, managers and employees RSG in the performance of the acts as herein alleged.

6.

Plaintiff ex Rel. William J. Schumer (hereinafter "SCHUMER") is and at all times herein alleged was a resident

and citizen of the United States, the State of California, and of the Central District of California. SCHUMER was employed by HUGHES as Division Contract Manager at RSG until September 2, 1988 and at the time of filing the Complaint is employed by HUGHES as Assistant Division Contracts Manager at the HUGHES Missile Systems Group in Canoga Park, California.

7.

The standing of Plaintiff to sue to recovery payments made to Defendant by the United States Government upon false claims is granted by Federal Statute, 31 U.S.C. Section 3730(b)(1).

FIRST CAUSE OF ACTION
VIOLATION OF FALSE CLAIMS ACT

8.

The subject matter of the instant Civil Action are the F-15 Radar Multistage Improvement Program Contract (hereinafter "MSIP CONTRACT"), F-18 Radar Upgrade Program Contract (hereinafter "F-18 CONTRACT") and a classified program designated by the unclassified nomenclature 2301 (hereinafter "2301 SPECIAL PROGRAM CONTRACT") performed by HUGHES RSG at Los Angeles, California.

9.

Plaintiff believes that certain facts may not be alleged without jeopardizing national security. Pending investigation by the United States Attorney of the Disclosure Statement submitted by Plaintiff in compliance with 31 U.S.C. 3730(b)(2), Plaintiff is compelled to leave the allegations contained herein general in nature. The documents, facts and transactions are highly classified and therefore, cannot be disclosed by SCHUMER to his Counsel Pace and Kennedy. SCHUMER is ready, willing and able to make full disclosure to the Justice Department and other federal agencies, including

the 2301 Special Projects Office and Defense Contract Audit Agency, who have the requisite security clearances.

10.

Plaintiff is informed and believes and thereon alleges that the wrongful acts and conduct of Defendant HUGHES as hereinafter alleged with regard *inter alia* to the Commonality Agreement have been confirmed and documented by internal cost analysis, audits and records of HUGHES. Plaintiff is further informed and believes and thereon alleges that said cost analysis, audits and records were circulated among the officers and management personnel of HUGHES who had full knowledge thereof, and who, rather than take corrective or remedial action with regard *inter alia* to the Commonality Agreement, ordered said Commonality Agreement, cost analysis, audits or records suppressed or concealed from the customers of HUGHES including the United States Government.

11.

Plaintiff alleges that the officers, managers, and employees of HUGHES and RSG have acted in furtherance of the above-referenced conspiracy to fraudulently obtain the payment of false claims through the preparation of false records, statements, and invoices, and the collaborative omission and suppression of material facts, as herein alleged.

12.

In doing the acts herein alleged, the officers, managers, and employees of HUGHES RSG were acting in their respective capacities as officers, agents or employees of HUGHES and/or RSG.

13.

Defendant HUGHES knowingly misallocated and mischarged costs incurred on the MSIP FFP CONTRACT to the 2301 SPECIAL PROGRAM CPIF/AF CONTRACT and F-18 FPI CONTRACT in order to receive payment and make profit thereon. Plaintiff alleges that each of the claims for

payment by HUGHES and the payments received by HUGHES constitute false claims within the definitions set forth in 31 U.S.C. 3729(a).

14.

The officers, managers and employees of Defendant HUGHES have conspired to suppress and/or destroy evidence of the false claims in order to prevent its customers, ultimately the United States Government, from becoming aware of the HUGHES false claims and in order to permit HUGHES to continue to receive contract payments and to permit HUGHES to increase its profits in violation of 31 U.S.C. 3729(a).

15.

Beginning in 1983, Defendant Hughes Aircraft Company, Radar Systems GROUP, Los Angeles, California (hereinafter "HUGHES") falsely misallocated and mischarged development costs incurred on the classified F-15 Radar Multistage Improvement Program classified firm fixed price (FFP) contract (hereinafter "MSIP CONTRACT") to two incentive contracts, to wit:

(1) The classified cost plus incentive fee award fee (CPIF/AF) classified contract, bearing the unclassified nomenclature 2301 (hereinafter "2301 SPECIAL PROGRAM CONTRACT"); and

(2) The classified fixed price incentive (FPI) contract for the F-18 Radar Upgrade Program (hereinafter "F-18 CONTRACT").

The United States Government defrayed the development costs of the MSIP FFP CONTRACT to the extent of the incentive share ratios of the 2301 SPECIAL PROGRAM CPIF/ AF CONTRACT and the F-18 FPI CONTRACT without authorization by contract or law and contrary to the no-cost modification to 2301 SPECIAL PROGRAM CONTRACT. The allocation and mischarge was intentional by HUGHES as evidenced by a 1983 Commonality Agreement

signed by the HUGHES MSIP Program Manager Luke Bogdonovich, F-18 Program Manager Freeman Nelson, and 2301 SPECIAL PROGRAM Manager David Lynch (as well as the HUGHES Division Controiler Joseph Rohlinger) at the specific request of J.R. Giacoletto, then Director of Contracts and now President of the HUGHES Radar Systems Group and now Vice President of Hughes Aircraft Company (hereinafter "GIACOLETTO"). Meade Livesay, President, HUGHES Radar Systems Group, was also fully informed in 1983.

16.

The misallocation and mischarge was contrary to the 2301 SPECIAL PROGRAM CONTRACT agreements with the HUGHES classified customer (hereinafter "CUSTOMER") and a no-cost modification to the 2301 SPECIAL PROGRAMS CONTRACT. It is estimated by SCHUMER that the total development incurred cost allocated away from the MSIP FFP CONTRACT from 1983-1988 to the 2301 SPECIAL PROGRAM CPIF/AF CONTRACT and to the F-18 FPI CONTRACT exceeds \$40,000,000 because of the MSIP technical problems that caused severe cost overruns on the MSIP FFP CONTRACT.

17.

On December 18, 1981, HUGHES was advised that HUGHES had won the full scale development 2301 SPECIAL PROGRAM CONTRACT to employ the existing HUGHES F-15 APG-63 radar processing modules, except for frequency change and repackaging of the modules.

18.

On March 8, 1982, the new 2301 SPECIAL PROGRAM Division was created with SCHUMER as Division Contracts Manager.

19.

On March 18, 1982, HUGHES received the executed 2301 SPECIAL PROGRAM CONTRACT which specified the basic HUGHES F-15 APG-63 radar processing core modules.

20.

In April 1982, the 2301 SPECIAL PROGRAM mission changes caused lengthy negotiations to revise the radar processor core capacity specifications and to determine cost and schedule impacts. There were two main areas of technical concern:

(1) The novel classified antenna approach. The antenna was of such concern that a special Risk Reduction Program was imposed on HUGHES by its CUSTOMER.

(2) The data processing capacity for the Radar Data Processor (hereinafter "RDP"), Analog Signal Converter (hereinafter "ASC") and Radar Signal Processor (hereinafter "RSP") and other modules where processing rates and throughputs were increased beyond the capacity of the existing HUGHES F-15 APG-63 radar modules which were specified in the basic 2301 SPECIAL PROGRAM CONTRACT.

21.

In April, 1982, HUGHES advised the CUSTOMER that HUGHES itself would fund the aforesaid RDP, ASC and RSP increased radar processor core capacity changes at no cost to the CUSTOMER. In December 1982, HUGHES advised the CUSTOMER that HUGHES was anticipating the receipt of a contract for the processor capacity upgrade of the existing HUGHES F-15 APG-63 radar which became the MSIP CONTRACT. In several verbal and written presentations, HUGHES represented to the CUSTOMER:

(1) That the upgrade processor core modules developed on the SIP CONTRACT would be provided to the 2301 SPECIAL PROGRAM at no cost to the CUSTOMER. HUGHES represented to the CUSTOMER there would be a

slight decrease in cost because the upgraded MSIP processor modules would be simpler to frequency change than the existing HUGHES F-15 APG-63 modules.

(2) That HUGHES would meet all processing requirements of the 2301 SPECIAL PROGRAM and retain the specification-required future growth capacity.

(3) That all costs incurred in the development, manufacture and test of the upgrade processor modules would be allocated and charged to the MSIP CONTRACT except for the frequency-change and repackaging of the modules costs.

22.

In January 1983, a no-cost modification for the upgraded processor core modules change was made to the 2301 SPECIAL PROGRAM CONTRACT.

23.

In March 1983, HUGHES received the firm fixed price MSIP CONTRACT for F-15 Aircraft only with no provision for cost allocations to any other aircraft, contract or program.

24.

In July 1983, GIACOLETTO (who had been promoted to Group Vice President on May 19, 1983 but retained his title as Radar Systems Group Director of Contracts) told SCHUMER to "draw up" a "Commonality Agreement" between the 2301 SPECIAL PROGRAM, the F-18 PROGRAM and the MSIP PROGRAM to share equally 1/3, 1/3 and 1/3, all the upgrade processor modules development costs incurred on the MSIP CONTRACT. The Commonality Agreement was to be executed by the then three Program Managers, David Lynch for the 2301 SPECIAL PROGRAM, Freeman Nelson for the F-18 PROGRAM and Luke Bogdonovich for the F-15 MSIP PROGRAM. When SCHUMER asked GIACOLETTO if the customers were aware of the Commonality Agreement, GIACOLETTO was adamant in telling SCHUMER that no word of the agreement

was to reach anyone, especially the 2301 SPECIAL PROGRAM CUSTOMER. When SCHUMER pointed out that HUGHES had assured the CUSTOMER, as evidenced by a no-cost contract modification, that there would no-cost for the upgraded processor modules changes, and that the Commonality Agreement would be "triple-dipping" and a conscious contractual and legal violation, GIACOLETTO directed that the Commonality Agreement be prepared for the signatures of the three program managers and for Joseph Rohlinger who was then HUGHES Division Controller and Group Vice President.

25.

In September 1983, GIACOLETTO demanded to see what SCHUMER had done on the Commonality Agreement. SCHUMER reported that he had done nothing to create the agreement and SCHUMER told GIACOLETTO that he did not want his name associated in any way with the Commonality Agreement.

26.

In October 1983, SCHUMER informed Vern Munushian. Submanager of Contracts (reporting to SCHUMER) on the 2301 SPECIAL PROGRAM (hereinafter "MUNUSHIAN") about the proposed Commonality Agreement. In November 1983, MUNUSHIAN was so concerned that HUGHES might not be fully aware of the contractual and legal implications of the Commonality Agreement that MUNUSHIAN made an appointment to express his concerns to Meade Livesay, President of the HUGHES Radar Systems Group, who listened and said that he would check into the matter. MUNUSHIAN wrote a Memorandum to the File expressing contractual and legal objections to the proposed Commonality Agreement.

27.

On December 15, 1983, GIACOLETTO demanded the Commonality Agreement. SCHUMER told GIACOLETTO

that he would have no part of such a secret arrangement. GIACOLETTO said if you will not do it, I will find someone who will. SCHUMER then wrote a Memorandum to the File documenting the aforesaid transactions with regard to the Commonality Agreement.

28.

In January 1984, SCHUMER was told by GIACOLETTO that MUNUSHIAN was to be removed as Contracts Manager on the 2301 SPECIAL PROGRAM because "he was too close with the customer."

29.

During 1984-1987, at the monthly 2301 SPECIAL PROGRAM review meetings on cost, schedule, technical problems, etc., attended by top-level management, SCHUMER heard the 2301 SPECIAL PROGRAM management (especially the Program Manager David Lynch and Assistant Program Manager Robert Prokopf) frequently complain that the schedule delays and huge cost growth on the 2301 SPECIAL PROGRAM was substantially caused by the unforeseen technical problems and cost escalation on the MSIP PROGRAM which delayed delivery of the MSIP upgraded processor core modules to the 2301 SPECIAL PROGRAM. The cost growth on the 2301 SPECIAL PROGRAM CPIF/AF CONTRACT is classified but it is enormous. The Program Manager David Lynch complained that it was unfair that the 2301 SPECIAL PROGRAM had to absorb 1/3 of the enormous MSIP cost, caused in part as schedule pressure mounted, to the extensive use of overtime premiums which had not been authorized or approved by the CUSTOMER on the 2301 SPECIAL PROGRAM CPIF/AF CONTRACT.

30.

It is the estimate of SCHUMER from the 2301 SPECIAL PROGRAM reviews that incurred cost mischarges to the 2301 SPECIAL PROGRAM under the Commonality

Agreement exceeded \$20 million plus a like amount charged to the F-18 FPI CONTRACT.

31.

The second generation Commonality Memorandum of Agreement dated March 15, 1985 provides:

"2.4 (U) SPECIFIC FUNDING AGREEMENTS FOR COMMON HARDWARE

2.4.1. (U) Radar Data Processor (RDP) Unit.

(U) *The initial development phase for the common RDP hardware has been funded solely by the F-15 MSIP Program and has been completed. Funding for efforts during the present Improvement/Upgrade phase shall be shared equally (1/3 each) among the three programs. These efforts shall include upgrades to the common module designs to implement a dual CPU architecture.*

2.4.2. (U) Analog Signal Converter (ASC) Unit.

(U) *The development effort for the common ASC modules has been shared equally between the F-15 MSIP program and Special Programs in accordance with a previous Memorandum of Agreement. Funding for tasks still in the Initial Development Phase shall continue to be shared equally by the F-15 MSIP and Special Programs. Funding for efforts that have completed the Initial Development Phase shall be shared equally (1/3 each) among the three programs.*

2.4.3. (U) Radar Signal Processor (RSP).

(U) *The programmable signal processor presently under development, commonly referred to as the NGP (Next Generation Processor), has been funded solely by the F-15 MSIP program. As tasks complete this Initial Development Phase, subsequent funding during the Improvement/Upgrade phase shall be shared equally between the F-15 MSIP program and the F-14D program."*

The Commonality Memorandum of Agreement evidences that HUGHES misallocated and mischarged incurred costs away from the MSIP FFP CONTRACT to the 2301 SPECIAL PROGRAM CPIF/AF CONTRACT and F-18 FPI CONTRACT without contractual or legal authorization, or in violation of the no-cost modification to the 2301 SPECIAL PROGRAM CONTRACT, as follows:

(1) For the Analog Signal Converter (ASC) Unit the costs for the Initial Development Phase were misallocated and mischarged equally between the MSIP FFP CONTRACT and the 2301 SPECIAL PROGRAMS CPIF/AF CONTRACT, so as to be in violation of the no-cost modification and to constitute false claims. Development costs after the Initial Development Phase were misallocated and mischarged equally among the MSIP FFP CONTRACT, 2301 SPECIAL PROGRAM CPIF/AF CONTRACT and F-18 FPI CONTRACT. The cost misallocation and mischarge of one-half of the ASC Initial Development Phase costs away from the MSIP FFP CONTRACT to the 2301 SPECIAL PROGRAMS CPIF/AF CONTRACT as well as the misallocation and mischarge of two-thirds of the subsequent ASC development costs away from the MSIP FFP CONTRACT to the 2301 SPECIAL PROGRAMS CPIF/AF CONTRACT and the F-18 FPI CONTRACT constitute false claims.

(2) For the Radar Data Processor (RDP) Unit, SCHUMER alleges that the assertion by HUGHES that the Initial Development Phase costs were allocated solely to the FFP MSIP PROGRAM, is false. In fact, the Initial Development costs phase were also misallocated and mischarged to the 2301 SPECIAL PROGRAM CONTRACT so as to be in violation of the no-cost contract modification and to constitute false claims. The RDP "Improvement/Upgrade Phase" costs were misallocated equally between the FFP MSIP CONTRACT, the 2301 SPECIAL PROGRAM CPIF/AF CONTRACT and the

FPI F18 CONTRACT. The cost misallocation and mischarge of two-thirds of the RDP "Improvement Upgrade Phase" development costs away from the FFP MSIP CONTRACT to the CPIF/AF BLACK 2301 CONTRACT and to the FPI F18 CONTRACT constitute false claims.

(3) For the Radar Signal Processor (RSP) Unit, SCHUMER alleges that the assertion by HUGHES that the Initial Development Phase (at least for the Next Generation Processor) cost was allocated solely to the MSIP FFP CONTRACT, is false. In fact, the Initial Development costs phase were also misallocated and mischarged to the 2301 SPECIAL PROGRAM CONTRACT so as to be in violation of the no-cost contract modification and constitute false claims.

WHEREFORE, Plaintiff prays for judgment against Defendant as follows:

1. For restitution to the United States Government of all monies wrongfully received by HUGHES to be in excess of \$40,000,000.00 or according to proof at the time of trial, pursuant to 31 U.S.C. 3729 et seq.
2. For three times the dollar amount proven to have been wrongfully charged by HUGHES and paid by the United States Government to HUGHES under prime and subcontracts, pursuant to 31 U.S.C. 3729(a) (7);
3. For recovery of all awards or percentages of the proceeds of the action or settlement pursuant to 31 U.S.C. 3730(d);
4. For costs of suit incurred herein including reasonable attorneys fees pursuant to 31 U.S.C. 3730(d);
5. For such other and further relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands trial by jury pursuant to Rule 38(b), Federal Rules of Civil Procedure.

Dated: January 20, 1989

Respectfully submitted,

PACE AND KENNEDY

By: /s/ Dean Francis Pace
Dean Francis Pace
Attorneys for Plaintiff

Dean Francis Pace
Wm. John Kennedy
PACE & KENNEDY
Suite 1600 Century City
1901 Avenue of the Stars
Los Angeles, California 90067
(213) 277-2900

Attorneys for Plaintiff

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

WILLIAM J. SCHUMER,

Plaintiff,

v.

HUGHES AIRCRAFT
COMPANY, a Delaware
Corporation

Defendant.

) CIVIL ACTION
) CV89-0201 SVW
)
) MOTION FOR LEAVE
) TO FILE A FIRST
) AMENDED COM-
) PLAIN OR LEAVE
) TO AMEND TO CON-
) FORM TO EVIDENCE
) AT TRIAL
)
)
) DATE: July 3, 1989
) TIME: 1:30 P.M.
) COURTROOM: F

NOW COMES PLAINTIFF and respectfully moves the Court for leave to file a First Amended Complaint or to amend the Complaint to conform to evidence at trial, pursuant to Rule 15(b), Federal Rules of Civil Procedure, to wit:

(1) Fraud and Breach of the Implied Warranty of Good Faith and Fair Dealing for failure to give Plaintiff the promised 1988 midyear performance review admitted by Defendant in its Answer.

(2) Breach of Contract and the Implied Warranty of Good Faith and Fair Dealing for failure to give Plaintiff a 1988 performance, salary and bonus review in violation of the Hughes Aircraft Company Policy and Practice 3-2 to reflect his satisfactory 1988 performance and the Memorandum of commendation dated July 21, 1988.

(4) Breach of Contract and the Implied Warranty of Good Faith and Fair Dealing for the reprisal, retaliation and retribution by Defendant for the Pursuit by Plaintiff in 1988 of the Hughes Aircraft Company Policy and Practice on Employee Dispute Resolution Procedure against his Superior John F. Wilson.

(5) Breach of Contract and the Implied Warranty of Good Faith and Fair Dealing for the reprisal, retaliation and retribution by Defendant for the refusal of Plaintiff to perform an unlawful act under United States Government contracts awarded to Defendant in violation of the False Claims Act, 31 U.S.C. 3729 et seq., *United States of America ex rel. William J. Schumer*, CV89-1963 MRP, under seal until lifted on April 21, 1989 by the United States District Court for the Central District of California, to wit:

(a) In July, September and December 1983, J.R. Giacoletto, then RSG Director of Contract and now RSG President and Corporation Senior Vice President demanded that Plaintiff prepare and secure signatures on a Confidentiality Agreement which was in violation of the United States Government contracts with Defendant on classified Special Programs.

(b) On June 23, 1986, a United States Air Force audit report evidenced the aforesaid contract violations

and false claims to which Defendant responded on September 9, 1986.

(c) Beginning in July 1986, Defendant began restricting Plaintiff from access to the Special Program contracts in order that Plaintiff would not discover the aforesaid unlawful false claims confirmed by the United States Air Force audit.

(d) In July 1987, Plaintiff discovered on the desk of one of his subordinates, Joseph Schulsinger, a Defense Contract Audit Report, DCAA Form 1, which disapproved of the aforesaid false claims confirmed by the United States Air Force audit. Thereupon, Plaintiff was transferred away from the Special Programs organization in order that he would not have access to the aforesaid false claims confirmed in the DCAA Form 1 and United States Air Force audit.

(e) On August 16, 1988, Defendant made a presentation to the USAF AFPRO on the aforesaid Commonality Agreement false claims reported in the DCAA Form 1 and United States Air Force audit.

(f) In August 1988, during an Employee Dispute Resolution Procedure conference with Salvester Mendoza, Corporate EEOC Manager, Plaintiff responded to questions and reiterated his position regarding the aforesaid unlawful acts by Defendant.

(g) On September 2, 1988, Plaintiff was terminated from his employment with Defendant by the change of his office door lock, by the confiscation of his security and employment badges and by escorting Plaintiff from the premises of Defendant for the contrived cause of "management's good faith belief that his continued employment was detrimental to the interests of the organization."

(h) Since February 1989, the aforesaid false claims by Defendant as confirmed by the DCAA Form 1 and

United States Air Force have been under investigation by the Justice Department in Washington, D.C.

The instant motion is predicated upon all of the papers and documents on file herein, the attached Memorandum of Points and Authorities, and the argument by counsel if entertained by the Court.

Dated: June 2, 1989

Respectfully submitted,

PACE AND KENNEDY

By: /s/ Dean Francis Pace
Dean Francis Pace
Attorneys for Plaintiff

Dean Francis Pace
PACE AND QUINN
Suite 2080 Century City North
10100 Santa Monica Boulevard
Los Angeles, California 90067
(213) 277-2900

Attorneys for Plaintiff
William J. Schumer

UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA)
EX REL WILLIAM J. SCHUMER,)
	) CIVIL ACTION
Plaintiff	) CV89-0390 MRP
)
v.)
	) FIRST AMENDED
HUGHES AIRCRAFT COMPANY,	) COMPLAINT FOR
	) VIOLATION OF
Defendant	) THE FALSE
	) CLAIMS ACT

NOW COMES PLAINTIFF and alleges:

JURISDICTION

1.

Jurisdiction is predicated upon federal subject matter jurisdiction pursuant to 31 U.S.C. 3732(a).

VENUE

2.

Venue in the Central District Court for the Central District of California is predicated upon 31 U.S.C. 3737(a). Defendant HUGHES AIRCRAFT COMPANY and its RADAR SYSTEMS GROUP, the entity charged herein with violations of 31 U.S.C. 3729 et seq., now and at all times alleged herein had its principal place of business in the Central District of California. The violations of 31 U.S.C. 3729 et seq. alleged herein occurred in the Central District of California. Plaintiff has sustained the damages alleged herein within the Central District of California.

PARTIES

3.

Defendant HUGHES AIRCRAFT COMPANY (hereinafter "HUGHES"), is and was at all times alleged herein a Delaware corporation with its principal place of business located in Los Angeles, California, within the Central District of California.

4.

HUGHES RADAR SYSTEMS GROUP (hereinafter "RSG"), is and was at all times alleged herein a division of HUGHES in El Segundo, California, charged with the principal performance of subcontracts and prime contracts between HUGHES and the United States Government as hereinafter alleged.

5.

Plaintiff ex rel William J. Schumer (hereinafter "SCHUMER") is and at all times herein alleged was a resident and citizen of the United States, the State of California, and of the Central District of California. SCHUMER was employed by HUGHES as Division Contract Manager at RSG until September 2, 1988 and at the time of filing the Complaint is employed by HUGHES as Assistant Division Contracts

Manager at the HUGHES Missile Systems Group in Canoga Park, California.

6.

The standing of Plaintiff to sue to recovery payments made to Defendant by the United States Government upon false claims is granted by Federal Statute, 31 U.S.C. Section 3730 (b)(1).

FIRST CAUSE OF ACTION
VIOLATION OF FALSE CLAIMS ACT

7.

The subject matter of the instant Civil Action are the F14D Program Contract (hereinafter "F14-D CONTRACT"), F-15 Radar Multistage Improvement Program Contract (hereinafter "F-15 MSIP CONTRACT"), F-18 Radar Upgrade Program Contract (hereinafter "F-18 CONTRACT") and B-2 Special Programs Contracts (hereinafter "B-2 SPECIAL PROGRAMS CONTRACTS") performed by HUGHES RSG in El Segundo, California.

8.

Plaintiff believes that certain facts may not be alleged without jeopardizing national security. Pending investigation by the United States Attorney of the Disclosure Statement submitted by Plaintiff in compliance with 31 U.S.C. 3730(b)(2), Plaintiff is compelled to leave the allegations contained herein general in nature. The documents, facts and transactions, are highly classified and therefore, cannot be disclosed by SCHUMER to his Counsel. SCHUMER is ready, willing and able to make full disclosure to the Justice Department and other federal agencies, including the United States Air Force and Navy Special Project Offices and Defense Contract Audit Agency, who have the requisite security clearances.

9.

Plaintiff is informed and believes and thereon alleges that the wrongful acts and conduct of Defendant HUGHES as hereinafter alleged with regard *inter alia* to the Commonality Agreements have been confirmed and documented by internal cost analysis, audits and records of HUGHES. Plaintiff is further informed and believes and thereon alleges that said cost analysis, audits and records were circulated among the officers and management personnel of HUGHES who had full knowledge thereof, and who, rather than take corrective or remedial action with regard *inter alia* to the Commonality Agreements ordered said Commonality Agreements, cost analysis, audits or records suppressed or concealed from SCHUMER and the customers of HUGHES and the Department of Defense, including specifically the United States Air Force and Navy Project Offices.

10.

From 1982 to 1990, Defendant Hughes Aircraft Company, Radar Systems Group, Los Angeles, California (hereinafter "HUGHES") falsely misallocated and mischarged development costs by means of six Commonality Agreements dated December 14, 1982 (hereinafter "AGREEMENT 1"), June 24, 1983 (hereinafter "AGREEMENT 2"), June 24, 1983 (hereinafter "AGREEMENT 3"), February 8, 1985 (hereinafter "AGREEMENT 4"), June 19, 1985 (hereinafter "AGREEMENT 5") and May 8, 1987 (hereinafter "AGREEMENT 6") among the four programs F-14D, F-15 MSIP, F-18 and B-2 SPECIAL PROGRAMS CONTRACTS.

11.

From 1982 to 1990, HUGHES falsely invoiced and the United States Government reimbursed misbid, misallocated and mischarged costs of the F-14D CONTRACT, the F-15 MSIP CONTRACT, the F-18 CONTRACT and to the extent of the incentive share ratios, the B-2 SPECIAL PROGRAMS CPIF/AF CONTRACT without authorization of contract or

law and without the knowledge and approval of the Department of Defense Project or Procurement Offices. The misbid, misallocation and mischarge were intentional by HUGHES as evidenced by six Commonality Agreements signed by the HUGHES F-14 Program Manager J.V. Ferrero, F-15 Program Managers Luke Bogdonovich and R.S. Jamison, F-18 Project Manager E. R. Muntean, and SPECIAL PROGRAMS Manager David Lynch as well as the HUGHES Division Controller Joseph Rohlinger. J.R. Giacoletto, then Director of Contracts and now President of the HUGHES Radar Systems Group and Senior Vice President of Hughes Aircraft Company, approved the six Commonality Agreements.

12.

Without the knowledge or approval of the customers of HUGHES or the Department of Defense, including specifically the United States Air Force and Navy Project Offices, HUGHES unilaterally, secretly and falsely misbid, misallocated and mischarged costs among the F-14D, F-15 MSIP, F-18 and B-2 SPECIAL PROGRAMS CONTRACTS by means of six Commonality Agreements, expressly for the Radar Data Processor, the Analog Signal Converter and the Radar Signal Processor, including without limitation:

(1) December 11, 1982 Commonality Agreement for the Radar Data Processor.

(2) June 24, 1983 Commonality Agreement for the Radar Data Processor.

(3) June 24, 1983 Commonality Agreement for the Analog Signal Converter.

(4) December 3, 1984, Commonality Agreement (MOA dated February 8, 1985) for the Radar Data Processor, Analog Signal Converter, and Radar Signal Processor.

(5) June 19, 1985 Commonality Agreement for the Radar Data Processor, Analog Signal Converter, and Radar Signal Processor.

(6) May 8, 1987 Commonality Agreement for the Radar Data Processor, Analog Signal Converter, and Radar Signal Processor.

In or about 1982, HUGHES agreed to fund the design and development of the Radar Data Processor on the F-15 AFCD and F-15 MSIP CONTRACTS exclusively, whereby cost allocations or charges pursuant to the Commonality Agreements to the F-14D, F-18 and/or B-2 SPECIAL PROGRAMS CONTRACTS constitute false claims. In or about 1982, HUGHES priced and bid the design and development of the Analog Signal Converter including Gate Arrays on the B-2 SPECIAL PROGRAMS CONTRACT, whereby allocations and charges to the B-2 SPECIAL PROGRAMS CONTRACT for the Analog Signal Converter including Gate Arrays to be adapted to meet the specifications of the F-14D, F-15 MSIP and F-18 CONTRACTS constitute false claims. HUGHES double priced and bid the development of the Analog Signal Converter including Gate Arrays on the F-15 MSIP CONTRACT. The cost allocations and charges for the Analog Signal Converter pursuant to the Commonality Agreements to the F-14D, F-15 MSIP and F-18 CONTRACTS constitute false claims. The development of the Radar Signal Processor was funded solely on the F-15 MSIP CONTRACT to February 8, 1985 when it was made retroactive to September 15, 1984, and thereafter, the costs of the Radar Signal Processor were allocated and charged to the F-14D, F-18 and B-2 SPECIAL PROGRAMS CONTRACTS, which constitute false claims.

13.

Without the knowledge or approval of the customers of HUGHES or the Department of Defense, including specifically the United States Air Force and Navy Project Offices, HUGHES unilaterally, secretly and falsely misallocated and

mischarged costs among the F-14D, F-15 MSIP, F-18 and B-2 SPECIAL PROGRAMS CONTRACTS by means of six Commonality Agreements, expressly for hardware, software, STE, LTE, leasehold, material and procurement, including without limitations:

AGREEMENT: 1

(A) Advanced RDP including refinements and changes (2.1.2).

(B) EDM hardware fabrication, assembly and test (2.1.5).

(C) DSIS and STE hardware design Commonality (2.1.6).

(D) Changes and upgrades to common support software (3.1.3).

(E) DSIS common software, funded solely by SPECIAL PROGRAMS (3.1.5).

AGREEMENT: 2 COVERAGE SAME AS AGREEMENT 1, PLUS:

(A) RDP refinements and changes including Engineering Support (2.1.2).

AGREEMENT: 3

(A) ASC development (2.1.1).

(B) ASC refinements, changes and Configuration Management (2.1.2).

(C) EDM hardware (2.1.5).

(D) STE hardware (2.1.6).

(E) Common Hybrids and gate arrays (2.2).

(F) Operating test and support software (3.1).

(G) Mods and improvements to support software (3.1).

(H) Leasing costs for facilities (4.0).

AGREEMENT: 4 COVERAGE SAME AS AGREEMENT 3, PLUS:

(A) Radar Data Processor (2.4.1).

(B) Analog Signal Converter (2.4.2).

(C) Radar Signal Processor (2.4.3)

(D) Common power supplies (2.4.4).

(E) Common hardware fabrication (2.4.7).

(F) TRI MUX and RSP Power Converter Modules on F-14 and B-2 SPECIAL PROGRAMS (2.4.8).

(G) Configuration management and control of design improvement changes (2.4.8).

(H) Laboratory test Equipment (LTE) on F-15 and SPECIAL PROGRAMS (2.4.9).

(I) DSIS and STE allocated among F-14, F-15 and B-2 SPECIAL PROGRAMS.

(J) Labor, residual material, lot and freight costs (2.4.11).

AGREEMENT: 5 COVERAGE SAME AS AGREEMENT 4, PLUS:

(A) Radar Data Processor (2.4.1).

(B) Analog Signal Converter (2.4.2).

(C) Radar Signal Processor (2.4.3).

(D) Firm memory module (1.2.3).

(E) Sustaining engineering (2.2.3).

(F) Composite hardware requirements (2.4.5).

(G) Engineering material labor and ODC (2.4.11)

(2.4.12) (H) Common hardware part specifications

(2.4.12) (I) Common hardware part qualification testing

(J) Material and process specifications (2.4.13)

AGREEMENT 6: COVERAGE SAME AS AGREEMENT 5.

14.

Without the knowledge or approval of the customers of HUGHES or the Department of Defense, including specifically the United States Air Force and United State Navy Project Offices, HUGHES unilaterally, secretly and falsely misallocated and mischarged costs among the F-14D, F-15 MSIP, F-18 and B-2 SPECIAL PROGRAMS CONTRACTS by means of six Commonality Agreements, expressly for design and improvement changes that should have been the sole prerogative of the Department of Defense, specifically the United States Air Force and United States Navy Project Offices, including without limitation:

AGREEMENT 1:

(A) F-15 Advanced Fighter Capability Demonstration AFCD and B-2 SPECIAL PROGRAMS allocated 1/2 and 1/2 (2.1.2).

(B) Identical part numbers (2.1).

(C) No definition of the mechanics of cost allocation.

AGREEMENT 2:

(A) F-15 MSIP and B-2 SPECIAL PROGRAMS allocated 1/2 and 1/2 (2.1.2).

(B) Identical part numbers (2.1).

(C) No definition of the mechanics of cost allocation.

AGREEMENT 3:

(A) F-15 MSIP and B-2 SPECIAL PROGRAMS allocated 1/2 and 1/2 (2.1.1).

(B) Identical part numbers (2.1).

(C) No definition of the mechanics of cost allocation.

AGREEMENT 4:

(A) F-14, F-15 MSIP and B-2 SPECIAL PROGRAMS allocated 1/3, 1/3 and 1/3 (2.4).

(B) Different part numbers authorized (2.1).

(C) Commonality Management Board (CMB) established to "... approve equitable cost allocation percentages" (1.3).

(D) Commonality Advisory Committee (CAC) established to "... determine the status of the development phase of common equipment and recommend equitable cost allocation percentages for approval by the CMB" (1.3).

AGREEMENT 5:

(A) F-14, F-15 MSIP and B-2 SPECIAL PROGRAMS allocated 1/3, 1/3 and 1/3 or 1/2 and 1/2 (2.4).

(B) Different part numbers authorized (2.2).

(C) Defines Commonality Management of CMB, CAC, and subcommittees (1.3).

(D) Establishes cost sharing for sustaining engineering (2.2.3).

(E) Creates specific funding agreement for RDP, ASC, RSP and Power Supplies (2.4.1).

(F) Costs charged to Commonality Account and then transferred out to programs (2.4.7).

(G) Requirements for Commonality plans, reports, reviews, cost accounts and charges per "Commonality Operating Instructions" (2.4.13).

AGREEMENT 6:

(A) F-14, F-15 MSIP, F-18 and B-2 SPECIAL PROGRAMS allocated 1/4, 1/4, 1/4 and 1/4 or 1/3, 1/3, and 1/3 or 1/2 and 1/2 (1.2.3, 2.4.1, 2.4.2, 2.4.3).

(B) Different part numbers still authorized (2.4.7).

(C) Adds duties for CAC Chairman and creates the Commonality Change Management Board (CCMB), Materials and Processes Management Board (MPMB) and Parts Management Board (PMB) (4.8.11).

(D) Costs of CCMB, MDMB and PMB divided by number of Commonality drawings used by each program (4.8.4).

(E) Adds the "Control Level Item" (CLI) for proportional cost allocation (4.8.5).

(F) Material reverts to Commonality Account (4.8.11).

(G) Creates journal from Commonality Account (4.8.11).

(H) Introduces a Contract Allocation Matrix (4.8.11).

15.

The Commonality Agreements dated February 8, 1985 and June 19, 1985 provided that the cost sharing with the F-14D contract was retroactive to September 15, 1984. The Commonality Agreement dated May 8, 1987 provided that cost charged for improvement/upgrade and sustaining engineering was retroactive to September 15, 1984. None of the Commonality Agreements provided for adjusted reallocation of costs or invoices predicated upon the aforesaid retroactive cost allocations to September 15, 1984.

16.

On December 18, 1981, HUGHES was advised that HUGHES had won the full scale development B-2 SPECIAL PROGRAMS CONTRACT to employ the existing HUGHES F-15 APG-63 and F-18 radar processing modules, except for frequency change and repackaging of the modules, with no

provision for cost allocations to or from any other aircraft, contract or program.

17.

On or about March 8, 1982, the new B-2 SPECIAL PROGRAMS Division was created with SCHUMER as Division Contracts Manager. In or about March, 1982, HUGHES received the letter B-2 SPECIAL PROGRAMS CONTRACT which specified the basic HUGHES F-15 APG-63 and F-18 radar processing core modules for the B-2 aircraft with no provision for cost allocations to or from any other aircraft, contract or program.

18.

Beginning in or about April 1982, the B-2 SPECIAL PROGRAMS mission changes caused lengthy negotiations to revise the radar processor core capacity specifications and to determine cost and schedule impacts. There were two main areas of technical concern:

(1) The novel classified antenna approach. The antenna was of such concern that a special Risk Reduction Program was imposed on HUGHES.

(2) The data processing capacity for the Radar Data Processor, Analog Signal Converter and Radar Signal Processor, and other modules where processing rates and throughputs were increased beyond the capacity of the existing HUGHES F-15 APG-63 and F-18 radar modules which were specified in the B-2 SPECIAL PROGRAMS CONTRACT.

19.

On or about October 26, 1982, HUGHES was awarded the definitized B-2 SPECIAL PROGRAMS CONTRACT which provided for the design and development of the advanced Analog Signal Converter including Gate Arrays. In 1982 and 1983, HUGHES double priced and bid the advanced Analog Signal Converter including Gate Arrays on the F-15 MSIP CONTRACT.

20.

In or about March 1983, HUGHES received the fixed price incentive F-15 MSIP CONTRACT for F-15 aircraft only with no provision for cost allocations to or from any other aircraft, contract or program. Effective in or about 1984, HUGHES received the F-14D and F-18 UPGRADE CONTRACTS with no provision for cost allocations to or from any other aircraft, contract or program.

21.

RELATOR is informed and believes, and thereon alleges, that the customers of HUGHES, the Department of Defense and specifically the United States Air Force and United States Navy Project Offices had no knowledge, had not made any advance agreement, and had not approved the misbid, misallocations and mischarges made by HUGHES among the F-14D, F-15 MSIP, F-18 and B-2 SPECIAL PROGRAMS CONTRACTS pursuant to the HUGHES Commonality Agreements, whereby the Contracting Officer caused the suspension of payments to HUGHES on the B-2 SPECIAL PROGRAMS subcontract under Prime Contract F33657-81-C-0067 by the issuance of a DCAA Form 1 pursuant to DOD FAR supplement 42.801 and 42.803. The F-14D, F-15 MSIP, F-18, and B-2 SPECIAL PROGRAMS CONTRACTS did not provide any authorization for the unilateral and secret misbid, misallocations and mischarges by HUGHES among said contracts which have different Congressional Appropriations to different agencies within the Department of Defense.

22.

It is estimated by SCHUMER that the false misbids, misallocations and mischarges by HUGHES among the F-14D, F-15 MSIP, F-18 and B-2 SPECIAL PROGRAMS CONTRACTS from 1982-1990 in the sum of \$50,000,000, or according to proof at the time of trial.

23.

Defendant HUGHES misbid, misallocated and mischarged incurred costs among the F-14, F-15 MSIP, F-18 and B-2 SPECIAL PROGRAMS CONTRACTS without contractual or legal authorization from 1982 to 1990, in violation of the Truth in Negotiation Act, 10 U.S.C. 2306(a) and 41 U.S.C. 254(d) and Federal Acquisition Regulations 15.802(a) and (b)(3), and 15.804-2, and 15.806, whereby HUGHES falsely and unlawfully bid and certified proposals on the F-14D, F-15 MSIP, F-18 and B-2 SPECIAL PROGRAMS procurements by the Department of Defense that did not disclose the cost allocations pursuant to the Commonality Agreements without authorization of contract or law, constituting certification violations of Federal Acquisition Regulation 15.804-4 and Defective Cost and Pricing Data in violation of Federal Acquisition Regulation 15.804-7.

24.

Defendant HUGHES knowingly misbid, misallocated and mischarged costs incurred among the F-14D CONTRACT, the F15 MSIP CONTRACT, the F-18 CONTRACT and the B-2 SPECIAL PROGRAMS CONTRACT in order to receive payment and make profit thereon. Plaintiff alleges that each of the claims for payment by HUGHES and the payments received by HUGHES constitute false claims within the definitions set forth in 31 U.S.C. 3729(a).

25.

The number of false claims by HUGHES from 1982 to 1990 that should bear a \$5,000 to \$10,000 penalty pursuant to 31 U.S.C. 3729(a)(7) is conservatively estimated to be 1,000, whereby at \$5,000 the total penalty would be \$5,000,000 or at \$10,000 the total penalty would be \$10,000,000. The number of false claims by HUGHES was derived from the fact that HUGHES vouchered at least weekly on the F14D, F15, F18 and B-2 SPECIAL PROGRAMS CONTRACTS by DD250

vouchers, progress payment vouchers and cost reimbursement vouchers.

26.

The officers, managers and employees of Defendant HUGHES have conspired to suppress and/or destroy evidence of the false claims in order to prevent its customers, ultimately the United States Government, from becoming aware of the HUGHES false claims and in order to permit HUGHES to continue to receive contract payments and to permit HUGHES to increase its profits in violation of 31 U.S.C. 3729(a).

27.

Plaintiff is informed and believes and thereupon alleges, that at all times alleged herein, Defendant HUGHES had knowledge of, acquiesced in, authorized, directed, and/or ratified the conduct of the officers, managers and employees RSG in the performance of the acts as herein alleged.

28.

Plaintiff alleges that the officers, managers, and employees of HUGHES and RSG have acted in furtherance of the above referenced conspiracy to fraudulently obtain the payment of false claims through the preparation of false records, statements, and invoices, and the collaborative omission and suppression of material facts, as herein alleged.

29.

In doing the acts herein alleged, the officers, managers, and employees of HUGHES RSG were acting in their respective capacities as officers, agents or employees of HUGHES and/or RSG.

WHEREFORE, Plaintiff prays for judgment against Defendant as follows:

(1) For restitution to the United States Government of all monies wrongfully invoiced by HUGHES and reimbursed by the United States Government to HUGHES in the sum of

\$50,000,000, or according to proof at the time of trial, pursuant to 31 U.S.C. 3729 et seq.

(2) For three times the amount wrongfully invoiced by HUGHES and reimbursed by the United States Government to HUGHES under prime and subcontracts in the sum of \$150,000,000, or according to proof at the time of trial, pursuant to 31 U.S.C. 3729(a)(7);

(3) For civil penalty of not less than \$5,000 and not more than \$10,000 for each and every invoice wrongfully submitted by HUGHES for reimbursement by the United States Government and/or prime contractors under United States Government Contracts from 1982-1990 in the sum of \$5,000,000 at the minimum \$5,000 penalty or \$10,000,000 at the maximum \$10,000,000 penalty, or according to proof at the time of trial, pursuant to 31 U.S.C. 3730(d);

(4) For all awards or percentages of the proceeds of the action or settlement pursuant to 31 U.S.C. 3730(d);

(5) For costs of suit incurred herein including reasonable attorneys fees and expenses pursuant to 31 U.S.C. 3730(d);

(6) For such other and further relief as the Court deems just and proper.

Dated: April 3, 1990

PACE AND QUINN

By: /s/ Dean France Pace
Dean Francis Pace
Attorneys for Plaintiff
William J. Schumer

STUART M. GERSON
Assistant Attorney General
ROBERT L. BROSIO
United States Attorney
JOHN E. NORDIN II
Asst. United States Attorney
Telephone: (213) 798-3552
MICHAEL F. HERTZ
VINCENT B. TERLEP, JR.
United States Department of Justice
Post Office Box 261
Ben Franklin Station
Washington, D.C. 20044
Telephone: (202) 304-0474

Attorneys for the United States

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,)
<i>ex rel.</i> WILLIAM J. SCHUMER)
	) CV 89-0390 MRP (Bx)
Plaintiff,)
	) NOTICE OF
v.	) ELECTION BY THE
	) UNITED STATES
HUGHES AIRCRAFT CO., INC.	) DECLINING
	) <u>INTERVENTION</u>
)
Defendant.)
)

TO THE COURT AND ALL PARTIES TO
THIS CIVIL ACTION:

Pursuant to the False Claims Act, 31 U.S.C. § 3730(b) (2)&(4), the United States of America, by its undersigned attorneys, hereby gives notice to the Court of its election to decline to intervene and proceed with this action at this time.

The United States requests, pursuant to 31 U.S.C. § 3730 (c)(3), that the parties serve copies of all pleadings filed in the action upon it through the undersigned counsel at the below address, and, upon its request and at its expense, that the parties supply the United States with copies of transcripts of depositions taken in this action.

Although the United States has declined, at this time, to enter its appearance in this action, the Court is respectfully referred to 31 U.S.C. § 3730(b) which provides that the relator may carry on the action in the name of the Government, but that "[t]he action may be dismissed only if the court and the Attorney General give written consent to the dismissal and their reasons for consenting."

Therefore, the United States respectfully requests that should this action be proposed either by the relator or the defendant to be dismissed, settled, or otherwise discontinued, this Court first solicit the consent of the Attorney General through the undersigned attorneys of the United States Department of Justice, before ruling or granting its approval.

Respectfully submitted,

STUART M. GERSON
Assistant Attorney General

ROBERT L. BROSIO
United States Attorney

JOHN E. NORDIN, II
Asst. United States Attorney

/s/ Vincent B. Terlep, Jr.
MICHAEL F. HERTZ
VINCENT B. TERLEP, JR.
U.S. Department of Justice
Civil Division
Post Office Box 261
Ben Franklin Station
Washington, D.C. 20044
Telephone: (202) 304-0474
Attorneys for the United States

Dated: May 30, 1990

JAMES J. GALLAGHER
 MARK R. TROY
 McKENNA & CUNEO
 444 South Flower Street, 8th Floor
 Los Angeles, California 90071
 (213) 688-1000

Attorneys for Defendant
 HUGHES AIRCRAFT COMPANY

**UNITED STATES DISTRICT COURT
 FOR THE CENTRAL DISTRICT OF CALIFORNIA**

UNITED STATES OF AMERICA,)
<i>ex rel.</i> , WILLIAM J. SCHUMER,	) Civil No.
	) CV 89-0390-MRP
Plaintiff,)
	) AFFIDAVIT OF
vs.	) JOHN F. WILSON
)
HUGHES AIRCRAFT COMPANY,)
)
Defendant.)
)

I, John F. Wilson, declare and state:

1. I am Director of Contracts for the Radar Systems Group of Hughes Aircraft. I have read the complaint filed by William J. Schumer in the above captioned matter and am familiar with the allegations made therein.

2. On July 30, 1986, the Air Force Plant Representative Office ("AFPRO") held a meeting with Hughes personnel to discuss the findings of an audit conducted by the Air Force

Audit Agency. This meeting addressed the items contained in a Department of the Air Force document entitled "Report of Audit 86-5, Review of Common Advanced Radar Development Costs" (hereafter "audit report"). The document which had previously been classified and has recently been declassified consists of three narrative pages plus two pages consisting of listings of general ledger accounts and dollar amounts. The audit, had been performed during the period of August 1985 to April 1986. A true and correct copy of the three narrative pages is attached hereto as Exhibit 1.

3. The audit report stated that the purpose of the audit was to examine costs accumulated by Hughes for the development of certain radar hardware common to three radar systems programs -- the B-2, the F-15 Multistage Improvement Program ("MSIP"), and the F-14D -- and to determine whether the costs accumulated for the development of the common subunits were "equitably" distributed among [sic] the participating programs." Exhibit 1 (Audit report) ¶¶ 1, 3.

4. The audit report alleged that certain subunits developed under the F-15 program were to be used on the B-2 and F-14D programs, but that the F-15 program was to bear the full costs for that development effort. The report identified the common subunits as the Radar Data Processor, Analog Signal Converter, and Radar Signal Processor. Exhibit 1 (Audit report) ¶ 2.

5. The audit report alleged that the F-15 program "was proposed, evaluated, and negotiated as a stand-alone effort . . . requir[ing] Hughes to design, develop, fabricate, and test the new [F-15] radar and did not address any cost sharing with other programs." Exhibit 1 (Audit report) ¶ 5.

6. The audit report alleged that "Hughes developed internal [Memorandums of Agreement ("MOA's")] between separate Hughes program managers for cost sharing as early as December 1982 and established accounts for the collection of development costs on efforts they deemed common to more than one system." Exhibit 1 (Audit report) ¶ 5.

7. The audit report alleged that "it was not appropriate for Hughes to allocate any of the non-recurring development costs for the [F-15] items to the other programs." Exhibit 1 (Audit report) ¶ 5.

8. The audit report alleged that "Hughes has charged development costs to all three customers [i.e. the B-2, F-14D and F-15 MSIP] that should be borne by the F-15 MSIP. The decision to distribute these costs and the ratio for the distribution were made internally by Hughes with no input from the appropriate government program offices or the prime contractors." Exhibit 1 (Audit report) ¶ 4.

9. The audit report alleged that since the F-15 contract was in an overrun condition, "every dollar of development effort charged to that contract is a dollar loss to Hughes. The allocation of development costs to the other contracts reduces [Hughes'] loss." Exhibit 1 (Audit report) ¶ 6.

10. On December 10, 1987, the Defense Contract Audit Agency ("DCAA") issued a "Notice of Contract Costs Suspended and/or Disapproved" which suspended a substantial amount of cost under Hughes' cost reimbursement contract on the B-2 Programs. A true and correct copy of the DCAA notice, in the form received by Hughes, is attached hereto as Exhibit 2.

11. Generally, audit reports questioning the allow-ability of costs and alleging defective pricing are routinely provided to contractors to enable them to prepare appropriate responses. Hughes prepared and submitted its response to the Air Force and is in the process of submitting a formal claim for reimbursement of its costs, now that the Department of Justice has completed its investigation and determined not to intervene in Schumer's action.

I declare under penalty of perjury that the foregoing is true and correct. If called upon, I could testify to the matters contained herein.

Executed this 7th day of September, 1990, at Los Angeles, California.

/s/ John F. Wilson
John F. Wilson

DEFENSE LOGISTICS AGENCY
 DEFENSE PLANT REPRESENTATIVE OFFICE
 HUGHES LOS ANGELES
 P.O. BOX 92463
 LOS ANGELES CALIFORNIA 90009-2463

DCMDW-RKA

September 19, 1990

SUBJECT: Request for Audit Comment on Cost Accounting
 Standards Aspect of RSG Commonality Issue

TO: DCAA/J. McGowan

1. Request DCAA review and comment on the Cost Accounting Standards (CAS) aspects of the RSG commonality issue. The issue originated from Air Force Audit Agency (AFAA) Report 86-5, which found that the contractor had allocated development costs between major radar programs based upon internal Memorandums of Agreement (MOAs or commonality agreements). An unclassified copy of the AFAA report provided by the company is encl 1. Based upon the AFAA report, DCAA audit reports (encl 2 and 3), and AFPRO technical reviews it was recommended that the plant office cognizant of the prime contractor withhold \$15 mil. In a parallel action a qui tam suit was brought against Hughes by a former RSG contracts manager for the use of commonality agreements and the suit was reviewed by the Dept of Justice (DOJ). In approximately May 90, DOJ chose not to join the qui tam action, and RSG requested release of the \$15 mil suspension from the prime. The DPRO recommended against release of the suspension due to the unresolved issues (encl 4).

2. It appears that the contractor was in conflict with their disclosed accounting practices when they allocated development costs between contracts in accordance with the commonality agreements. Prior to 1984 RSG had three (3) separate Disclosure Statements; Group Office, Non-Manufacturing Division, and Manufacturing Division. The specific area of

the Disclosure Statement at issue is Item No. 2.5.0, Method for Charging Direct Labor. The Manufacturing Division wording for Section 2.5.0.Y (4) was as follows:

Direct labor cost incurred in the manufacture of common hardware is collected in a holding account and is allocated to contracts based on requirements times standards.

There was no provision for the allocation of *development* costs between contracts in the Non-Manufacturing Division Disclosure Statement.

3. On 5 Jul 84, the contractor submitted a revised Disclosure Statement, dated 2 Jan 84, which consolidated the three separate Disclosure Statements and included among other things "Refinements to statements describing the procedures for Commonality Pools in effect at RSG". Specifically, this revision revised Item 2.5.0.Y (4) as follows:

Direct labor cost incurred for engineering design, support and manufacture of common hardware is collected in a holding account and is allocated to contracts based on contemplated requirements.

It appears that the Disclosure Statement was reviewed by DCAA Audit Report 4521-5A441400, dated 26 Feb 85, (encl 6) and it was the audit opinion that the statement adequately described the contractor's accounting practices and no instances of non-compliance were observed. On 1 Apr 85, the PACO approved the Disclosure Statement and requested submittal of a total cost impact statement (encl 7). The limited DPRO records do not show any evidence that the cost impact of the change in allocating engineering design labor was ever addressed by the contractor. (It does appear that the cost impact of other accounting changes in the Disclosure Statement were addressed).

4. Due to the time critical nature of this issue, your expedited comments are requested by 26 Sep 90. The support is appreciated.

7 Encl

1. AFAA Report 86-5, undated

2. DCAA Audit #511-7B486004
3. DCAA Audit #511-7B86004S1
4. PACO ltr, dtd 2 Aug 90
5. HAC ltr, dtd 5 July 84
6. DCAA Audit 4521-5A441400
7. PACO ltr, dtd 1 Apr 85

/s/ Brian Reilly

BRIAN F REILLY, Principal
Administrative Contracting
Officer

FOR OFFICIAL USE ONLY

JAMES J. GALLAGHER
MARK R. TROY
McKENNA & CUNEO
444 South Flower Street, 8th Floor
Los Angeles, California 90071
(213) 688-1000

Attorneys for Defendant
HUGHES AIRCRAFT COMPANY

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,	) Civil No. CV 89-0390-
<i>ex rel.</i> , WILLIAM J. SCHUMER,	) MRP
)
Plaintiff,	) SUPPLEMENTAL
	) AFFIDAVIT OF JOHN
vs.	) F. WILSON IN
	) SUPPORT OF
HUGHES AIRCRAFT	) DEFENDANT'S
COMPANY,	) MOTION FOR SUM-
	) MARY JUDGMENT
Defendant.	) F.R.C.P. 56(b)
)
	) Date: October 29, 1990
	) Time: 10:00 a.m.
	) Courtroom: Hon.
	) Mariana Pfaelzer

I, John F. Wilson, declare and state:

1. I am Director of Contracts for the Radar Systems Group of Hughes Aircraft Company ("Hughes"). This Affidavit is a supplement to my Affidavit executed on September 7, 1990, in support of Hughes' motion for summary judgment.

2. For purposes of Hughes' motion for summary judgment, the disclosures of the Air Force Audit Agency Report No. 86-5, entitled "Review of Common Advanced Radar Development Costs," (attached as Exhibit 1 to the Affidavit of John F. Wilson), and the Defense Contract Audit Agency ("DCAA") Form 1 "Notice of Contract Costs Suspended And/Or Disapproved," (attached as Exhibit 2 to the Affidavit of John F. Wilson), which are at issue, are limited to disclosures made to Northrop Corporation and to Hughes Aircraft Company.

3. The response by Hughes to the Air Force Audit Agency Report (Exhibit 1) and the DCAA Form 1 (Exhibit 2) is not in any way relevant to Hughes' motion for summary judgment.

4. Hughes received the Air Force Audit Agency Report (Exhibit 1) on July 30, 1986.

5. Hughes received the DCAA Form 1 (Exhibit 2) on December 10, 1987.

6. The Hughes copy of the Air Force Audit Agency Report (Exhibit 1) remained classified "SECRET" as of January 23, 1989, and remained classified until September 5, 1990, when it was declassified.

7. The DCAA Form 1 (Exhibit 2) has never been classified.

8. Hughes did not receive and does not possess the "Management Comments" referenced in the Air Force Audit Agency Report (Exhibit 1).

9. The word "withheld" which appears three times on the DCAA Form 1 (Exhibit 2) was on said DCAA Form 1 when it was received by Hughes.

I declare under penalty of perjury that the foregoing is true and correct. If called upon, I could testify to the matters contained herein.

Executed this 28th day of September, 1990, at Los Angeles, California.

/s/ John F. Wilson
John F. Wilson

NORTHROP**B-2 Division**Northrop Corporation

8900 East Washington Boulevard
 Pico Rivera, California 90660
 Telephone 213 942-3000

DECLARATION

I, Laurie L. Bilbruck hereby declare that I am employed as Manager, Subcontract Administration at Northrop Corporation and, on 31 August 1989 was designated as the Custodian of Records for all documents relating to Hughes Aircraft Company Commonality Agreements and the sharing of costs between 2301 Special Program, F-15 Radar Multistage Improvement Program and F-18 Radar Program.

I further declare that the within and attached pages are true and correct copies of original documents or the best copy available of the following documents:

Memo dated 15 June 1984 from R.J. Soikkeli to B. George requesting Government Audit Assistance.

Memo dated 13 February 1985 from R.C. Davis to S. Rubenstein attaching 1982 Hughes memo and MOA.

Whitepaper on "Radar Commonality" dated 20 February 1986.

Memo dated 17 March 1986 from R.P. Francis to R.J. Soikkeli.

Letter dated 14 May 1986 from W.R. Duke to J. Shulsinger of Hughes regarding "Potential Cost Disallowance."

DCAA Form 1 dated 10 December 1987.

I further declare that I am unable to locate the Air Force Audit Report dated June 23, 1988 requested by the Deposition Subpoena under Case Number CV89-0390 MRP because the date

appears to be in error. A document dated June 23, 1986 was located. However, it is classified "SECRET" and cannot be transmitted with this declaration.

IN WITNESS THEREOF, I have hereunto set my hand at Pico Rivera, California on this 12th day of October 1990.

/s/ Laurie L. Bilbruck
 Laurie L. Bilbruck

(attachments omitted in printing)

DCMDW-RKA

5 Feb 91

SUBJECT: Freedom of Information Act (FOIA) Request

TO: Mr. John P. Wilson, Contracts Director
Radar Systems Group
RS, R01, 12Z32References: (a) Pace, Quinn and Rose letter, dated 2 Jan 91.
(b) Pace, Quinn and Rose letter, dated 11 Jan 91.

The DPRO has received the attached FOIA requests for information related to B-2 subcontracts awarded to Hughes Aircraft Company by Northrop Corporation. Your comments are solicited regarding these FOIA requests.

Sincerely,

2 ENCL
A/S/s/ Brian Reilly
Brian Reilly, Principal
Administrative Contracting
Officer

**HUGHES
RADAR SYSTEMS GROUP**

11 February 1991

To: Mr. Brian Reilly,
Principal Administrative Contracting Officer

Subject: Freedom of Information (FOIA) Request

Reference: Your letter, dated 5 February 1991, same subject, reference: DCMDW-RKA

Thank you for soliciting Hughes Aircraft Company comments concerning Pace, Quinn and Rose letters dated 2 and 11 January 1991.

We are not specifically aware of what, if any, of the audit reports and records being sought by Mr. Dean Francis Pace the Defense Contract Audit Agency has in its possession. We can only evaluate Mr. Pace's request if we are provided with copies of these documents or are advised of their contents.

Notwithstanding, we object to the release of the types of documents requested as they would contain "trade secrets and commercial or financial information" which is "privileged or confidential" to Hughes under exemption (b) (4) of 5U.S.C.552.

Sincerely,

HUGHES AIRCRAFT COMPANY
Radar Systems Group

/s/ John F. Wilson
John F. Wilson
Director Contracts

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

HONORABLE MARIANA R. PFAELZER,
JUDGE PRESIDING

U.S.A. EX REL WILLIAM J.)	
SCHUMER,)	
PLAINTIFF,)	
)	
VS.	)	NO. CV. 89-390 MRP
)	
HUGHES AIRCRAFT COMPANY,)	
)	
DEFENDANT.)	
)	

REPORTER'S TRANSCRIPT OF PROCEEDINGS
LOS ANGELES, CALIFORNIA

MONDAY, FEBRUARY 11, 1991

BETH ESTHER ZACCARO
OFFICIAL COURT REPORTER
414 UNITED STATES COURTHOUSE
312 NORTH SPRING STREET
LOS ANGELES, CALIFORNIA 90012
(213) 626-2622

LOS ANGELES, CALIFORNIA: MONDAY,
FEBRUARY 11, 1991: 10:00

THE CLERK: ITEM NUMBER FIVE, CIVIL 89-390.
U.S.A. EX REL WILLIAM J. SCHUMER VS. HUGHES
AIRCRAFT COMPANY.

COUNSEL: PLEASE MAKE YOUR APPEAR-
ANCES.

MR. PACE: GOOD MORNING, YOUR HONOR,
DEAN PACE FOR PLAINTIFF.

MR. GALLAGHER: GOOD MORNING, YOUR
HONOR, JAMES J. GALLAGHER AND MARK TROY
FOR THE DEFENDANT.

THE COURT: ALL RIGHT.

I HAVE LOOKED OVER THE FILE, AND IT
SEEMS TO ME THAT IT WOULD BE APPROPRIATE TO
LET YOU GO ON UNTIL THE END OF OCTOBER WITH
THE DISCOVERY AND SET THE LAST DAY OF -
OCTOBER -- IF THAT IS A COURT DAY -- FOR THE
FILING OF MOTIONS.

ARE YOU GOING TO FILE MOTIONS?

MR. PACE: YES, YOUR HONOR.

THE COURT: WHAT DO YOU HAVE IN MIND?

MR. PACE: I BELIEVE THIS IS A MATTER OF
SUMMARY JUDGMENT, YOUR HONOR. THE FACTS
ARE REALLY NOT IN DISPUTE .

I BELIEVE THIS COURT SHOULD DETERMINE IF
BY SUMMARY JUDGMENT AND IF NOT, THIS WILL BE
A TRIAL BEFORE THE COURT BECAUSE OF THE
HIGHLY CLASSIFIED NATURE OF THESE MATTERS.
IT WOULD BE IMPOSSIBLE TO IMPANEL A JURY, SO
VIRTUALLY IF WE COULD PRESENT THE EVIDENCE
TO THE COURT BY WAY OF SUMMARY JUDGMENT, IF

THE COURT WOULD DECIDE THAT THERE SHOULD BE A TRIAL AT LEAST ON CERTAIN MATTERS, I AM CONFIDENT THAT WE COULD LIMIT THE ISSUES THAT WOULD HAVE TO BE TRIED BEFORE THIS COURT.

IT IS MY HOPE TO FILE A MOTION FOR PARTIAL SUMMARY JUDGMENT QUITE SOON.

THE COURT: NOW THAT IS ON THE LIABILITY ASPECT OF THE CASE?

MR. PACE: PERHAPS BOTH, YOUR HONOR.

THE COURT: HUM-HUM.

MR. PACE: IF IT PLEASES THE COURT, MAY I INFORM THE COURT OF TWO DEVELOPMENTS THAT HAVE OCCURRED SINCE WE FILED THAT JOINT STATUS REPORT.

FIRST THERE HAS BEEN NO COMPLIANCE WITH DISCOVERY BY DEFENDANT HUGHES AIRCRAFT COMPANY.

INTERROGATORIES, REQUESTS FOR PRODUCTION AND NOTICE OF A RULE 30(B)(6) WITNESS WAS FILED OR SERVED THE FIRST WEEK OF JULY, AND THROUGH VARIOUS DELAYS, HAS BEEN CONTINUED INCLUDING AN ORDER BY MAGISTRATE BROWN TO FEBRUARY 4TH WHICH WAS LAST MONDAY, AND THIS STATUS CONFERENCE WAS CONTINUED A WEEK BECAUSE OF THAT.

THE COURT: YES.

MR. PACE: LAST MONDAY THERE WAS ABSOLUTELY NO PRODUCTION OF DOCUMENTS.

I WAS INFORMED THAT THERE MAY BE AS MANY AS NINE RULE 30(B)(6) WITNESSES, BUT I WAS INFORMED THAT ALL NINE OF THEM AND COUNSEL

WERE UNAVAILABLE FOR THEIR DEPOSITIONS AS NOTICED LAST MONDAY.

THERE WERE OBJECTIONS TO INTERROGATORIES AND SOME ANSWERS THAT REFERRED TO DOCUMENTS THAT WERE NOT PRODUCED OR INCORPORATED OTHER ANSWERS WHICH ARE CLEARLY IN VIOLATION OF THE COMPLIANCE WITH DISCOVERY.

WE HAD A LOCAL RULE 715 MOTION IN MY OFFICE LAST MONDAY NIGHT AT 6:00 O'CLOCK. I WAS INFORMED THAT DEFENDANT WOULD RECONSIDER PREDICATED UPON NARROWING SOME OF THE REQUESTS.

LATER IN THE WEEK I WAS INFORMED THAT THEIR CLIENT WAS OUT OF TOWN UNTIL THURSDAY AND I JUST THIS MORNING FIVE MINUTES BEFORE TRIAL INDICATE THAT THEY ARE GOING TO PRODUCE CERTAIN UNCLASSIFIED DOCUMENTS ON WEDNESDAY, THE 13TH BUT NO MENTION ABOUT THE RULE 30(B)(6) WITNESSES AND NO MENTION WITH REGARD TO THE INTERROGATORIES WHICH AGAIN IS GOING TO REQUIRE FURTHER MOTIONS BEFORE MAGISTRATE BROWN.

THIS DISCOVERY IS CRITICAL TO UNDERSTAND THE REASON WHY HUGHES AIRCRAFT COMPANY TOOK THE POSITIONS THAT IT HAS TAKEN CLEARLY CONTRARY TO D.C.A.A. POSITIONS AS WE KNOW THEM THROUGH THE JUSTICE DEPARTMENT, AND FOR EXAMPLE, YOUR HONOR, UNDER THE COST ACCOUNTING STANDARDS BOARD THERE IS A DISCLOSURE STATEMENT FILED UNDER PENALTY OF PERJURY FOR CONTRACTS IN EXCESS OF TEN MILLION DOLLARS WHERE AN AEROSPACE CONTRACTOR IS REQUIRED TO REVEAL THE METHOD IN WHICH IT WILL ACCUMULATE AND ALLOCATE

COSTS AND THAT IT WHAT THIS CASE IS ALL ABOUT.

HUGHES AIRCRAFT COMPANY FAILED TO NOTIFY THE GOVERNMENT OF THESE UNIQUE MATTERS IN WHICH THEY HAVE ACCUMULATED AND ALLOCATED COSTS ON THE B2 PROGRAM, F14, 15 AND 18 CONTRACTS WHICH ARE AT ISSUE IN THIS CASE.

IT IS IMPERATIVE FOR PLAINTIFF BEFORE WE GO TO THE GOVERNMENT TO GAIN ALL OF THESE AUDIT REPORTS, D.C.A.A. FORM 1'S WHERE D.C.A.A. HAS ALREADY SUSPENDED ELEVEN MILLION EIGHT HUNDRED THOUSAND DOLLARS OF COSTS AS UNREIMBURSIBLE ON THE B2 CONTRACT ALONE.

WE NEED TO KNOW WHAT THEIR POSITION IS, AND THIS HAS BEEN TERRIBLY COMPLICATED BY THE FACT THAT SEVEN OR EIGHT MONTHS AFTER NOTICED DISCOVERY WE DON'T HAVE ANY.

THE SECOND THING I WOULD LIKE TO ADVISE THE COURT IS THIS.

INCONCEIVABLE AS IT IS, DEAN PACE TURNS OUT TO BE THE ONLY QUI TAM COUNSEL OF THE HUNDREDS OF QUI TAM CASES FILED THAT HAVE TWO CRITICAL HIGH SECURITY MATTERS PENDING.

I AM ADVISED THIS BY THE JUSTICE DEPARTMENT.

IF THE COURT WILL RECALL LAST MARCH AT THE STATUS CONFERENCE THE COURT SUGGESTED THAT BECAUSE COUNSEL FOR HUGHES AIRCRAFT COMPANY HAD TWO COUNSEL THAT WERE CLEARED THAT IT WOULD BE APPROPRIATE THAT THE RELATOR'S COUNSEL

* * * *

**DEFENSE LOGISTICS AGENCY
DEFENSE CONTRACT MANAGEMENT COMMAND
DEFENSE PLANT REPRESENTATIVE OFFICE
HUGHES LOS ANGELES
P. O. BOX 92463
LOS ANGELES, CALIFORNIA 90009-2463**

DCMDW-RKA

25 Mar 91

SUBJECT: Freedom of Information Act (FOIA) Request

TO: Mr. John F. Wilson, Contracts Director
Radar Systems Group
RS, R01, 12Z32

We received a revised request from Pace, Quinn and Rose under the Freedom of Information Act (FOIA) for documents and information pertaining to B-2, F-14, F15 and F18 subcontracts awarded to Hughes Aircraft Company (HAC) and specifically the following:

- (1) DCAA Audit Reports and DCAA Forms 1 and 2000, including DCAA Form 1 dated 10 Dec 87;
- (2) Air Force Audit Agency (AFAA) Report 86-5 and subsequent AFAA or DCAA reports;
- (3) 30 Jul 86 meeting [minutes] between the AFPRO and HAC to discuss the AFAA report;
- (4) Northrop request for Government Audit Assistance dated 15 Jun 84; and
- (5) the HAC Statement of Claim Re Suspension of Gate Array Radar Development Costs dated 4 Feb 88, including any supplemental HAC claims or actions thereon by the Government.

To determine the releasability of the information contained in these documents, and to give you the maximum protection under the law, we ask that you review the documents and give us the information required by the attachment to this letter entitled "Requirements of Exemption 5 U.S.C. 552(b)(4)."

Sincerely,

/s/ Thomas E. Woolpert
THOMAS E. WOOLPERT
Capt, USAF
Contracting Officer

2 Encl:

1. Requirements of
Exemption 5 U.S.C.
552 (b)(4)
2. List of Documents w/Atch

REQUIREMENTS OF EXEMPTION 5 U.S.C. 552 (b)(4)

The Freedom of Information Act (FOIA), as amended in 1974 by Public Law 93-502, requires federal agencies to provide virtually all agency records, unless specifically exempted, for public inspecting and copying. Section (b) of the Act contains nine exemptions that are the only basis for withholding records from the public. We are concerned here with the fourth exemption which provides that "trade secrets and commercial or financial information obtained from a person and privileged or confidential" may be withheld from requesters (5 U.S.C. 552(b)(4)).

To establish that the information requested is covered by the fourth exemption of the FOIA, the information requested must be a trade secret, commercial or financial information, obtained from a person, and privileged or confidential information. The United States Circuit Court of Appeals for the District of Columbia has held that:

Commercial or financial matter is "confidential" for purposes of the exemption if disclosure of the information is likely to have either of the following effects: (1) to impair the Government's ability to obtain necessary information in the future; or (2) to cause substantial harm to the competitive position of the person from whom the information was obtained. *National Parks and Conservation Ass'n v. Morton*, 498 F.2d 765, 770 (1974).

The court has indicated that even though the government may have no interest in keeping the information secret, "the exemption may be invoked for the benefit of the person who has provided commercial or financial information if it can be shown that public disclosure is likely to cause substantial harm to his competitive position."

If you feel that the release of subject material would be prejudicial to your commercial interests, and desire that the

government invoke the exemption for your benefit, please notify this office in writing before *29 March 1991*. Your notification should clearly identify those specific portions of the material that you wish withheld, including your basis therefore. Your notice should not be merely a conclusory legal argument. We are prepared to apply the law, but we need a detailed factual discussion from you. You should keep in mind that the Act requires that any reasonably segregable portion of a record be provided to requesters, after deletion of exempt portions. Therefore, if the deletion of key words or phrases would adequately "sanitize" the material to protect your interests, please so indicate. If you are unable to substantiate the adverse impact on your competitive position or to your commercial interest, the information may be released to the requester.

Under the FOIA, this office must respond to the requester by *2 April 1991*; therefore, we need your input by *29 March 1991*. If you have any questions concerning this matter, you may contact *Mr. Brian F. Reilly* at (213) 414-6446.

LIST OF DOCUMENTS

<u>DATE</u>	<u>PARA IN REQUEST</u>	<u>SUBJECT</u>	<u>TO</u>
10 Dec 87	(1)	DCAA Form 1, Notice #001	NORTHROP(N)
27 Sep 88	(1)	DCAA Report 4511-8 B179009	(N)-DCAA
8 May 89	(1)	DCAA Form 1, Notice 002	(N)
(undated)	(2)	AFAA Report 86-5 (Unclassified Version)	AFAA
16 Oct 86	(2)	DCAA Report 4511-7B486004	AFAA
2 Jun 87	(2)	DCAA Report 4511-7B486004S1	HUGHES (H)-AFPRO
	(3)	30 July 86 AFPRO/HAC Meeting	
		[so far a DPRO search has not resulted in such a document being found on record]	
15 Jun 84	(4)	Northrop Request for Audit	(N)-ACO
4 Feb 88	(5)	HAC "Statement of Claim Re Suspension of Gate Array Radar Development Costs Under Subcontract MPO 3NS-290450-AR," including all supplemental claims by HAC and actions thereon by the Government.	
		[so far a DPRO search has not resulted in such a document being found on record]	

**HUGHES
RADAR SYSTEMS GROUP**

05 April 1991

Defense Logistics Agency
Defense Contract Management Command
Defense Plant Representative Office
Hughes Los Angeles
P. O. Box 92463
Los Angeles, California 90009-2463

Re: DCMDW-RKA
Subject: Freedom of Information Act (FOIA) Request
Attention: Thomas E. Woolpert
Capt., USAF
Contracting Officer

Thank you for your messages, dated 25 and 27 March 1991, and enclosures of documents for Hughes Aircraft Company's review concerning Pace, Quinn and Rose's request under FOIA for documents and information pertaining to B-2, F-14, F-15 and F-18 subcontracts awarded to Hughes.

We have reviewed these materials and conclude that they must be provided to Pace, Quinn and Rose in any event under a discovery request in the U.S. District Court for the Central District of California in the case of *Schumer v. Hughes*, Civil Action CV 89-390 MRP (Bx), C.D. Cal. However, a protective order has been issued by the court enabling Hughes to appropriately identify data it considers proprietary. Accordingly, Hughes has stamped and is returning herewith the documents so marked for your submittal.

Sincerely,

HUGHES AIRCRAFT COMPANY

Radar Systems Group

/s/ John F. Wilson
JOHN F. WILSON
Director of Contracts

DEFENSE LOGISTICS AGENCY
 DEFENSE PLANT REPRESENTATIVE OFFICE
 HUGHES LOS ANGELES
 P.O. BOX 92463
 LOS ANGELES CALIFORNIA 90009-2463

RKEE

Nov 06 1991

SUBJECT: Technical Review of the HAC/D, Lynch
 Briefing of 18 Oct 91 for Capt Vance, Lt
 Barchick, and B. Reilly

TO: RKA (Mr B. Reilly)

1. In response to your request, RKEE has completed a technical review of the subject briefing. Due to the limited time frame allocated for this task, RKEE concentrated on validating the most important points of the briefing. This was accomplished by reviewing as many pertinent documents as possible (see Encl 1).

2. A review of the previous Det 36/EPE Hardware Commonality Report, dated 30 September 1986, revealed the following:

a. A limited number of documents were reviewed (13 each), 6 of which were purchase orders.

b. The only technical document reviewed was the Critical Item Development (CID) Specification for the B-2 radar. It is our belief that this Hardware Commonality Report was based on insufficient technical and associated data which could easily have resulted in the evaluator drawing the wrong conclusion.

3. - Our investigation supports the information presented in the briefing given by Mr David Lynch on 18 October 1991. The Analog Signal Converter (ASC) initial design effort using gate array technology was started on the B-2 Program in

March of 1982 to meet technical requirements of the B-2 radar. In June 1982, a MOA was signed by the B-2 & F-15 Program Managers to allocate costs of the development and fabrication of this ASC. But it was not until January 1984 that MACAIR approved a contract modification (RCP/CCP M0001 dated 4/23/83) to utilize the advanced ASC in the F-15 MISIP radar.

4. The Advanced Radar Data Processor (RDP) was designed for the F-15 MISIP radar and the F-15 program funded all development efforts for the basic design. In December 1982, the Program Managers of the F-15 and B-2 radar programs signed a MOA for the allocation of costs of development and fabrication tasks for the RDP. In February 1983, Northrup concurred with the Hughes proposal to use the F-15 RDP in the B-2 radar.

5. To summarize the above:

a. The ASC using gate array technology design was started on the B-2 radar program and was later used on the F-15 MISIP radar program with costs being allocated in accordance with a MOA between the B-2 and F-15 program offices.

b. The F-15 MISIP RDP design was funded by Hughes and the F-15 MISIP radar program and then used on the B-2 radar with costs being allocated in accordance with a MOA between the B-2 and F-15 program offices.

6. All documentation supporting this technical report is on file in Building R31. If you have any questions concerning this report please contact Mr John J. Boles at 414-6619.

1 Encl

/s/ D.A. Erickson
 DONALD A. ERICKSON
 Chief Systems Engineering Branch

(attachment omitted)

DEFENSE CONTRACT AUDIT AGENCY
SOUTHWESTERN REGION
Corporate Resident Office
Hughes Aircraft Company
200 N. Sepulveda Blvd. (SC/864/C130)
El Segundo, CA 90245-2463

4511/JLM/flm

14 November 1991

MEMORANDUM TO DIVISIONAL ADMINISTRATIVE
CONTRACTING OFFICER, DPRO,
HUGHES LOS ANGELES

SUBJECT: Determination of B-2 Commonality Issue

In response to your letter DCMDW-RKA, dated 6 November 1991, we are presenting our conclusions and recommendation on the B-2 Commonality Issue.

We concur with the contractor's claim for reimbursement of costs incurred for the design, development, fabrication assembly, and testing of modules and components incorporated into the Analog Signal Converter and Radar Data Processor units for the B-2 radar system. Our original recommendations for cost suspensions resulted from the Air Force Audit Agency findings that development costs charged to the Hughes' three major programs: F-15 MSIP, F14D, and B-2, should have been borne by the F-15 MSIP only.

Based on the original facts presented to DCAA during the 1985/1986 timeframe we believe they made the correct determination. Because the classified nature of the B-2 program precluded Hughes from discussing any aspect of the B-2 program with any other Hughes' customers or Air Force program office personnel not cleared on B-2, this prevented Hughes from disclosing full details regarding commonality in its pricing on the F-15 MSIP and F-14D programs. Later, the

Air Force authorized Hughes to disclose certain information without violating B-2 security requirements. Additionally as information has periodically become available these commonality ambiguities have been resolved or are in the process of resolution.

Our review of the currently available information has shown that the Hughes' gate array enhanced ASC became a requirement on the B-2 subcontract and was being worked on before the F-15 MSIP subcontract authorized funding for that effort. Also the cost allocation system adopted pursuant to Hughes' internal commonality agreements was disclosed to both Northrop and the Air Force. Therefore, the contractor's claim for reimbursement of costs incurred on the B-2 radar contract is valid.

If you have any questions please call me at (310) 364-8500.

/s/ Jeffrey L. McGowan
JEFFREY L. MCGOWAN
Resident Auditor

**DEFENSE LOGISTICS AGENCY
DEFENSE CONTRACT MANAGEMENT COMMAND
DEFENSE PLANT REPRESENTATIVE OFFICE
HUGHES LOS ANGELES
P.O. BOX 92463
LOS ANGELES, CALIFORNIA 90009-2463**

DCMDW-RKA

14 Nov 91

SUBJECT: Release of Suspended B-2 Radar Development Costs

TO: DPRO Northrop
ATTN: Everett Parker, DACO
DCMDW-RXA

1. References:

a. DPRO Hughes-LA Technical Review, dated 6 Nov 91

b. DPRO Hughes-LA letter dated 20 Aug 90, subject: Request for Release of Withhold

c. AFPRO Hughes/TM letter dated 18 Jan 89, subject: Suspension of Payment

d. AFPRO Hughes/TM letter dated 11 Aug 87, subject: Suspension of Payment

2. It is recommended that the B-2 radar development costs suspended in response to the above referenced letters be released. The contractor has substantiated that the requirement for the gate array upgraded Analog Signal Converter existed on the B-2 program *prior* to the award of the F-15 MSIP contract. The B-2 program would have borne all costs for the development of the Analog Signal Converter if the MSIP contract had not been received. In light of the benefits received, allocation of Analog Signal Converter development costs to the B-2 program is considered appropriate. It is

recommended that the suspended costs be released with the following caveats. First, the Government does not waive rights to a share in any settlement resulting from the parallel *qui tam* action in the event the relator's case is successful. Second, that an associated issue of Cost Accounting Standards non-compliance is still open and shall remain so until resolved to Government satisfaction.

cc: DLA/M. Stein /s/ Brian F. Reilly
DCAA/J. McGowan BRIAN F. REILLY, Divisional
 Administrative Contracting
 Officer

2 Encl

1. DPRO Technical Report
2. DCAA Memorandum

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA)
EX REL WILLIAM J. SCHUMER,)
)
 PLAINTIFF,)
) NO. CV89-0390 MRP
 VS.)
)
HUGHES AIRCRAFT COMPANY,)
)
 DEFENDANT.)

DEPOSITION OF ROBERT CHARLES DAVIS
DECEMBER 10, 1991

REPORTED BY: RUTH C. MOORE, CSR NO. 8444, RPR

JOB NO. 91655

SCHUMACHER SHORTHAND REPORTING
CORPORATION
2100 SAWTELLE, SUITE 103, LOS ANGELES, CA. 90025
(301) 478-3977

* * * *

Q. ON PAGE 2, THE LAST SENTENCE ON
PAGE 2 SAYS "WHEN REQUESTED, NO COMMON-
ALITY PLANS WERE AVAILABLE FROM HUGHES."
THE REFERENCE THERE IS TO HUGHES.

IS THAT RIGHT? 118-A?

A. THAT IS CORRECT.

Q. IT SAYS THAT NO COMMONALITY
PLANS WERE AVAILABLE FROM HUGHES.

WHAT IS YOUR UNDERSTANDING OF
WHAT THAT'S REFERRING TO?

A. I BELIEVE WHAT THAT'S REFERRING TO
IS DETAILED IMPLEMENTATION PLANS OF THE
COMMONALITY IMPLEMENTATION.

Q. WOULD THAT INCLUDE THE COMMON-
ALITY AGREEMENTS THEMSELVES? IS THIS SEN-
TENCE SAYING THAT THE COMMONALITY AGREE-
MENTS WERE NOT AVAILABLE FROM HUGHES?

A. I DO NOT BELIEVE THAT'S WHAT IT'S
SAYING.

Q. THERE ARE TWO ITEMS THAT ARE DIS-
CUSSED IN THIS DOCUMENT RELATING TO INDI-
CATED FINAL COST EXERCISES OR IFC EXERCISES.
THERE'S A MAY 1984 IFC AND A MAY 1985 IFC.

DO YOU SEE THOSE REFERENCES?

A. YES, I DO.

Q. IN THE PARAGRAPH ON PAGE 2, THE
PARAGRAPH AT THE BOTTOM, IT USES THE TERM
UNAUTHORIZED GROWTH, OR IT'S, I BELIEVE,
REFERRING TO UNAUTHORIZED COST GROWTH.

IS THAT WHAT IT'S REFERRING TO
WHEN IT SAYS "UNAUTHORIZED GROWTH"?

A. YES, IT IS.

Q. WHAT IS YOUR UNDERSTANDING OF THE MEANING OF THAT TERM "UNAUTHORIZED GROWTH"?

A. MY UNDERSTANDING OF THAT IS THAT SINCE THE RADAR WAS BEING PROCURED ON A COST PLUS CONTRACT, ALL COSTS ASSOCIATED WITH THAT CONTRACT ARE CHARGED TO THE CUSTOMER, MEANING NORTHROP, AND DON'T HAVE TO BE A PART OF A CHANGE THAT IS DIRECTED OR AUTHORIZED BY NORTHROP. THEREFORE, THESE COSTS WERE COSTS THAT WERE ASSOCIATED WITH DEVELOPING THE ALREADY EXISTING AUTHORIZED WORK.

MR. BENSON: COULD YOU READ THAT RESPONSE BACK AGAIN, PLEASE.

(WHEREUPON, THE ANSWER WAS READ BY THE REPORTER AS FOLLOWS: "MY UNDERSTANDING OF THAT IS THAT SINCE THE RADAR WAS BEING PROCURED ON A COST PLUS CONTRACT, ALL COSTS ASSOCIATED WITH THAT CONTRACT ARE CHARGED TO THE CUSTOMER, MEANING NORTHROP, AND DON'T HAVE TO BE A PART OF A CHANGE THAT IS DIRECTED OR AUTHORIZED BY NORTHROP. THEREFORE, THESE COSTS WERE COSTS THAT WERE ASSOCIATED WITH DEVELOPING THE ALREADY EXISTING AUTHORIZED WORK.")

Q. BY MR. TROY: NOW, DO YOU BELIEVE THAT THE STATEMENTS ABOUT UNAUTHORIZED COST GROWTH INDICATED A CONCERN THAT COSTS WERE BEING CHARGED TO THE B-2 THAT WERE NOT ALLOWABLE?

A. NO.

Q. IN FACT, THE PRIMARY CONCERN THAT NORTHROP HAD AT THIS TIME WAS NOT WHETHER THE COSTS WERE ALLOWABLE ON THE B-2 BUT, RATHER, A CONCERN ON COST GROWTH IN GENERAL.

ISN'T THAT CORRECT?

A. THAT IS CORRECT.

Q. AND PART OF NORTHROP'S CONCERN OVER COST GROWTH WAS THE LACK OF VISIBILITY AS TO HOW THESE COSTS WERE BEING MANAGED.

IS THAT CORRECT?

A. THAT IS CORRECT.

Q. LATER ON IN 1986 AND THEREAFTER, AIR FORCE AUDITORS REVIEWED SOME OF THE ISSUES THAT ARE DESCRIBED IN THE WHITE PAPERS.

WERE YOU AWARE OF THAT AUDIT?

A. YES, I WAS.

* * * *

(caption omitted in printing)

DEPOSITION OF BRIAN FRANCIS REILLY
DECEMBER 17, 1991

* * * *

Q. ARE YOU FAMILIAR WITH THE ISSUE ON THE B-2 PROGRAM RELATING TO A FORM 1 DISALLOWANCE IN THE AMOUNT OF APPROXIMATELY \$15 MILLION THAT RELATES TO COSTS ASSOCIATED WITH WHAT'S CALLED THE ASC GATE ARRAY DEVELOPMENT EFFORT?

A. YES, SIR.

Q. DID YOU BECOME FAMILIAR WITH THAT IN YOUR CAPACITY AS THE CHIEF OF THE CONTRACT MANAGEMENT DIVISION?

A. YES, SIR.

* * * *

Q. DO YOU KNOW WHETHER THERE ARE ANY ONGOING NEGOTIATIONS BETWEEN HUGHES AND THE GOVERNMENT RELATED TO OBTAINING OR REACHING AN ADMINISTRATIVE SETTLEMENT OF ANY CAS VIOLATION RELATED CLAIMS?

MR. GALLAGHER: OBJECTION. IT'S A VAGUE AND AMBIGUOUS QUESTION UNLESS IT'S RELATED SPECIFICALLY TO WHAT'S INVOLVED IN THIS LITIGATION.

MR. BENSON: BUT IT IS.

MR. GALLAGHER: WELL, THERE'S ALL KINDS OF POSSIBLE CAS ISSUES. ARE YOU TALKING ABOUT THE ONE IN THIS LITIGATION?

MR. BENSON: RELATED TO THIS LITIGATION.

Q. IF THERE ARE ANY SETTLEMENT NEGOTIATIONS BETWEEN THE GOVERNMENT AND HUGHES PERTAINING TO ANY CAS-RELATED VIOLATIONS?

A. AS I UNDERSTAND IT, THE ONLY RELATED COST ACCOUNTING STANDARDS ISSUE OPEN AT THIS TIME IS THE ONE REFERRED TO IN MY LETTER TO MR. PARKER. WE ARE WORKING, AS WE DO WITH ALL ADMINISTRATIVE ISSUES, TO RESOLVE THE ISSUE WITH THE COMPANY. THIS IS THE INFORMATION THAT WAS PROVIDED BY MR. LYNCH IN THE TECHNICAL REVIEW REFERRED TO IN THE TECHNICAL REPORT PROVIDING INFORMATION THAT SUPPORTED THE RESOLUTION OF THE COST ACCOUNTING STANDARDS ISSUE, AND THERE'S BEEN SUBSEQUENT MEETINGS ON THE RESOLUTION OF THE COST ACCOUNTING ISSUE.

* * * *

(WHEREUPON THE QUESTION WAS READ BY THE REPORTER AS FOLLOWS: "PRIOR TO THE AMENDMENT IN 1984, ARE YOU AWARE OF A COST ACCOUNTING DISCLOSURE STATEMENT FROM HUGHES APPLICABLE TO THE F-15 MSIP OR THE B-2 FSD WHICH SUGGESTED THE POOLING OF COSTS RELATED TO DIRECT LABOR?")

THE WITNESS: THE FIRST PART OF IT IS COST. THE COST ACCOUNTING STANDARDS DISCLOSURE STATEMENTS ARE APPLICABLE TO ALL NEGOTIATED CONTRACTS OVER A CERTAIN THRESHOLD.

Q. BY MR. BENSON: IS IT YOUR UNDERSTANDING THAT THE B-2 FSD AND THE F-15 MSIPS EXCEEDED THAT THRESHOLD?

A. YES, IT IS.

Q. WHAT'S THE REST OF YOUR RESPONSE?

A. WHAT I'M AWARE, FROM THE REVIEW THAT THE DPRO CONDUCTED, WAS WHAT WE FOUND WAS THAT, PRIOR TO THE DISCLOSURE IN 1984, THE AMENDMENT IN 1984, THAT THE DISCLOSURE STATEMENT SUBMITTED DID NOT SPECIFICALLY ADDRESS THE ALLOCATION OF DEVELOPMENT COSTS.

Q. INTO DIRECT LABOR POOLS?

A. WELL, INTO -- I WOULD PHRASE IT DIFFERENTLY. I WOULD SAY THE ALLOCATION -- IT WAS SILENT AS FAR AS ALLOCATION OF THE DIRECT LABOR -- OF DEVELOPMENT COSTS FOR DIRECT LABOR.

* * * *

Q. DO YOU KNOW IF, IN RETURNING THIS MONEY TO HUGHES, THESE WERE PART OF THE CONSIDERATIONS: WHETHER OR NOT THE CAS STANDARDS INCORPORATED WHAT IT WAS, WHETHER THEY FOLLOWED IT, WHETHER THEY CERTIFIED TO IT WHEN THEY ASKED NORTHROP OR THE GOVERNMENT TO GIVE THEM THE BIG BUCKS THAT THEY THOUGHT THEY WERE ENTITLED TO?

MR. GALLAGHER: OBJECTION. VAGUE QUESTION.

THE WITNESS: PRIOR TO THE SIGNATURE ON EXHIBIT 75 AUTHORIZING A RELEASE AND RECOMMENDING THE RELEASE OF THOSE SUSPENDED COSTS, THE GOVERNMENT TOOK INTO CONSIDERATION THE BASIS FOR THE SUSPENSION, WHICH WAS SPECIFICALLY ANALOG SIGNAL CONVERTER COSTS, AND LOOKED AT THE ISSUE FROM BOTH A TECHNICAL AND ACCOUNTING

PERSPECTIVE AND CAME TO THE CONCLUSION THAT THERE WAS NOT A BASIS FOR CONTINUING THE SUSPENSION.

Q. BY MR. BENSON: THEY CAME TO THE CONCLUSION THAT THERE HAD NOT BEEN A VIOLATION OF THE CAS DISCLOSURE STATEMENT?

A. THEY CAME TO THE CONCLUSION THAT THERE WAS NOT A BASIS FOR CONTINUING THE SUSPENSION.

Q. BUT THEY DID NOT COME TO A CONCLUSION WHETHER OR NOT THERE WAS A VIOLATION OF THE CAS DISCLOSURE REQUIREMENT? THE CAS REQUIREMENTS OR DISCLOSURE CLAUSES INCORPORATED IN THE APPLICABLE CONTRACTS, THAT WAS NOT RESOLVED.

CORRECT?

A. WHAT WE TOOK INTO CONSIDERATION ON THE COSTS INVOLVED WAS: WAS THE DISCLOSURE A TECHNICAL NONCOMPLIANCE REGARDING THAT THE DISCLOSURE STATEMENT AMENDMENT DID NOT ADDRESS THIS AND HOW WAS THE CONTRACTOR'S PROPOSAL PREPARED, WHAT INFORMATION WAS DISCLOSED TO THE GOVERNMENT THROUGH THE PROPOSAL IN THE NEGOTIATION PROCESS. AND THAT WAS TAKEN INTO CONSIDERATION PRIOR TO RELEASE OF THE SUSPENSION.

Herbert Hafif, Bar No. 27311
 Phillip E. Benson, Bar No. 097420
 Jesse L. Young, Bar No. 123763
 Linda R. MacLean, Bar No. 101002
 Greg Hafif, Bar No. 149515
 LAW OFFICES OF HERBERT HAFIF
 269 West Bonita Avenue
 Claremont, California 91711
 (714) 624-1671

Attorneys for *Qui Tam* Plaintiff
 WILLIAM J. SCHUMER

UNITED STATES DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,)Case No. CV 89-0390
ex. rel., WILLIAM J. SCHUMER,	)MRP (Bx)
)
	)<i>QUI TAM</i>
Plaintiff,	)PLAINTIFF'S
	)SEPARATE STATE-
v.	)MENT OF MATERIAL
	)FACTS IN OPPOSI-
HUGHES AIRCRAFT	)TION TO DEFENDANT,
COMPANY,	)HUGHES AIRCRAFT
	)COMPANY'S MOTION
Defendants.	)FOR SUMMARY
	)JUDGMENT
)
	)DATE: March 9, 1992
	)TIME: 10:00 a.m.
	)COURTROOM:
	)Hon. Mariana R. Pfaelzer

* * * *

Defendant's "Uncontroverted Fact" No. 5:

On April 13, 1978, Hughes submitted to the Air Force Plant Representative Office ("AFPRO") and the Defense Contract Audit Agency ("DCAA") an amendment to Hughes' Cost Accounting Standards ("CAS") Disclosure Statement for the Radar Systems Group Manufacturing Division, dated April 4, 1978. The amended Disclosure Statement described Hughes' Commonality accounting methodology:

Direct labor cost incurred in the manufacture of common hardware is collected in a holding account and is allocated to contracts based on requirements times standards.

Plaintiff's Response to "Uncontroverted Fact" No. 5:

Controverted in part.

Plaintiff's Separate Statement of Material Facts:

Defendant's Exhibit 21 reveals the following:

(a) The reporting unit for the disclosure statement was Hughes' Radar Systems Group ("RSG") Manufacturing Division. Because no other reporting unit is listed, pursuant to CAS 202-1, (FAR 30.202-1) the only segment of Hughes to which the disclosure statement applied was the RSG Manufacturing Division, not the entire Hughes Corporation as suggested by the Defendant. Prior to 1984, RSG had three separate disclosure statements for three separate reporting units: Group Office, Non-Manufacturing Division and Manufacturing Division. There was no provision for the allocation of *development* costs between contracts in the non-manufacturing division disclosure statement. See Plaintiff's Exhibit 2 (DLA letter "Reilly", dated 9/19/90).

(b) The portion of the disclosure statement relating to "added accounting treatment of common direct material" is curiously omitted from the Defendant's Exhibit 21 and is, therefore, filed concurrently herewith as *qui tam* Plaintiff's

Exhibit 3. *Qui tam* Plaintiff's Exhibit 2 sets forth that portion of the omitted disclosure statement that clearly tracks the note at the bottom of Defendant's Exhibit 21 requiring the submission of a revised CAS Disclosure Statement in order to establish a "company-owned *inventory* (holding) account by RSG Manufacturing Division". That statement, under "Item No. 2.3.0(Y)(2) states that "Direct material cost incurred in the manufacture of common hardware is collected in a *holding account* and allocated to contracts based on *requirements*."

(c) The reference to "requirements" under Item No. 2.3(Y)(2) (*qui tam* Plaintiff's Exhibit 2) tracks item no. 2.5.0(Y)(4) in Defendant's Exhibit 21. Item no. 2.5.0(Y)(4) references the collection of direct labor costs incurred in the manufacture of common hardware in holding accounts and allocated to contracts based on "Requirements times standards".

(d) The reference to "requirements" and "requirement times standards" suggests that Defendant's Exhibit 21 applies to the accounting and cost accumulation practices associated with requirements contracts, although this is unclear given the dearth of foundational information provided by the Defendant, including the original disclosure statement amended by Defendant's Exhibit 21 and the remaining portions of the disclosure statement and amendments. Requirements contracts are specifically addressed in the FAR at section 16.503 and are separate and distinct from the types of contracts at issue in this case.

(e) The cover letter to Defendant's Exhibit 21 indicates that the amended disclosure statement was applicable to RSG's *manufacturing* efforts incurred on the Programmable Signal Processor containing common material. Further, Item No. 2.5.0 (Y)(4) pertaining to the allocation of direct costs is limited to the *manufacture of common hardware*. Common hardware in the defense community or standardized hardware, is controlled by the Secretary of Defense, pursuant to 10 U.S.C. Section 2451 et seq., through the development and

maintenance of a single catalog system listing the kinds of items that may be procured for recurrent use, identifying such items with performance data, eliminating overlapping and duplicate specifications and reducing the number of sizes and kinds of items that are generally similar.

Defendant's "Uncontroverted Fact" No. 6:

Hughes' CAS Disclosure Statement is a written description of Hughes' cost accounting practices and procedures. Prior to the award of a Government contract, the Government's Administrative Contracting Officer is responsible for reviewing the contractor's Disclosure Statement for adequacy and compliance.

Plaintiff's Response to "Uncontroverted Fact" No. 6:

Controverted in part.

Plaintiff's Separate Statement of Material Facts:

In addition to reviewing the CAS Disclosure Statement for both adequacy and compliance (see FAR 30.202-7), the Administrative Contracting Officer is required to notify the contractor in the notice of adequacy that a disclosed practice shall not, by virtue of such disclosure, be considered an approved practice for pricing proposals or accumulating and reporting contract performance cost data.

The disclosure of a cost accounting practice by a contractor does not determine the allow ability of particular items of cost, nor are disclosed practices deemed to have been approved by the contracting Agency as proper, approved, or agreed-upon practices for pricing proposals or for accumulating and reporting contract performance cost data. (See FAR 30.303).

The Government Administrative Contracting Officer responsible for determining the adequacy and compliance of a subcontractor's CAS Disclosure Statement is generally the ACO having cognizance of the prime contractor unless the subcontractor considers the disclosure statement privileged or

confidential in which case the subcontractor may submit it directly to the Government ACO and auditor cognizant of the subcontractor. The ACO cognizant of the subcontractor shall then make a recommendation to the ACO cognizant of the prime contractor. However, disclosure statements submitted by a subcontractor post-award must be approved by the ACO having cognizance of the prime contractor. If a pre-award disclosure statement is submitted to the ACO having cognizance of the subcontractor, a pre-award determination of adequacy is not required. Instead, the ACO cognizant of the subcontractor shall (i) notify the auditor that the adequacy review will be performed during the post-award compliance review and, upon completion (ii) notify the subcontractor, the contractor and the cognizant ACO's of the findings. (FAR 30.202-8) Compliance reviews, according to regulation, follow completion of the adequacy determination. (FAR 30.202-7). The auditor's post-award advisory compliance review, in conjunction with the ACO, does not relieve the contractor of responsibility for non-compliance should the auditor fail to detect a non-compliance. See *PACCAR Inc.* (ASBCA 1989) No. 27978, 89-1 BCA, Paragraph 21,696.

Defendant's "Uncontroverted Fact" No. 7:

Hughes' April 13, 1978 amendment to its Disclosure Statement was approved by the cognizant Government official.

Plaintiff's Response to "Uncontroverted Fact" No. 7:

Controverted.

Plaintiff's Separate Statement of Material Facts:

The Defendant bases this contention on the Declaration of Allen E. Brunmier, at Defendant's Exhibit 2, Paragraph 4. Brunmier, in 1978, appears to have been a cognizant ACO for Hughes, the subcontractor on the Programmable Signal Processor for the existing F-14, F-15 and F-18 production contracts. (See Defendant's Exhibit 20.) At Paragraph 4 of his declaration, Brunmier states that the PACO (Principal Administrative Contracting Officer) approved Hughes' April

4, 1978, Disclosure Statement based on his (Brunmier's) recommendation. Brunmier does not indicate whether the cognizant auditor performed a review of the Disclosure Statement or whether any auditor performed the required post-award compliance review, thereafter advising the ACO of the results, or the name of the approving PACO. In fact, it appears that the PACO who determined the adequacy of the post-award Disclosure Statement was Evan R. Brossman. (See Defendant's Exhibit 21, Page 304, and *Qui Tam* Plaintiff's Exhibit 4 (Brossman letter dated 26 March 1979 w/attachments).) The Defendant has provided no information indicating that the approving PACO was other than Brossman. Brossman, at the time, was the Principal Administrative Contracting Officer for Hughes, the subcontractor. There is no evidence that any ACO for the prime contractors on the F-18 (McDonnell Douglas), F-15 (McDonnell Douglas), and F-14 (Grumman) projects approved Hughes' Disclosure Statement. Therefore, the "cognizant Government official" may not have approved Hughes' April 4, 1978 amendment to its Disclosure Statement. Curiously, the declaration of Hughes' RSG Group controller at that time, Joseph Rohlinger (Defendant's Exhibit 1), omits reference to either the approval of the Disclosure Statement and, like Brunmier's Declaration, any reference to the identity of the cognizant approving ACO, although Rohlinger claims to have personally approved the so-called 24 March 1978 "Commonality Agreement" giving rise, according to the Defendant, to the 4 April 1978 Disclosure Statement. (See Defendant's Exhibit 1 at Paragraph 4 and Defendant's Exhibit 20.)

* * * *

Defendant's "Uncontroverted Fact" No. 16:

Hughes' technical proposal for the B-2 radar described conceptual approaches to meet the Air Force's performance specifications. The proposal did not represent a promise by Hughes to build the radar according to the configurations described in the proposal. It was understood by Hughes,

Northrop and the Air Force that the design of the radar was entirely the prerogative and responsibility of Hughes; that design was required only to achieve the performance requirements of the subcontract within the size and weight constraints specified.

Plaintiff's Response to "Uncontroverted Fact" No. 16:

Controverted in part.

Plaintiff's Separate Statement of Material Facts:

Hughes had *proposed* equipment that it felt would meet the requirements of the definitized specification. That hardware configuration had not yet been agreed upon formally through the design review process *that is required* of a Government contract. Davis Deposition, Plaintiff's Exhibit 10, p. 9:20-25. Although the Defendant claims it had some flexibility in the design approach submitted in its proposal, this approach was subject to customer approval in the award and contracting process. For example, Northrop, the prime B-2 contractor, refused to accept Hughes' initial proposal after award, but before contract definitization, to use the F-15 Radar Data Processor ("RDP") because "it was not a sure thing."

Subsequent to contract definitization in October 1982, Hughes convinced Northrop and the Air Force to accept the RDP on the basis that the F-15 customer of Hughes would fund the development of the RDP. Davis Deposition, Plaintiff's Exhibit 10, p.10:1-14:17. Tucker Deposition, Plaintiff's Exhibit 6, p. 45:9-16. Because of this representation that the F-15 customer would fund the development costs for the RDP, the Defendant was able to avoid the provisions of its definitized agreement with Northrop requiring the submission of a "change proposal" including a DD Form 633 for the submission of any change proposal involving a cost of \$500,000 or greater. See Defendant's Exhibit 27, p.347. The Defendant's formal contract proposal, however, was required to be submitted with a certificate of current cost and pricing data. See Truth in Negotiations Act ("TINA"), former section

10 U.S.C. Section 2306(F)(1)(c) (amended July 18, 1984). Such cost or pricing data enables the Government to perform cost or price analysis and enables the Government and the contractor or negotiate fair and reasonable prices. See FAR 15.804.1. "Cost or Pricing data" means all facts as of the date of the price agreement that prudent buyers and sellers would reasonably expect to effect price negotiations significantly, including vendor quotations and make or buy decisions. See FAR 15.801. Of similar significance is an offeror's possession of a current inventory of parts that could be used in performance. (See *Hardie-Tynes Mfg. Co.* (ABSCA 1976) Nos. 20367, 20387, 76-1 BCA Paragraph 11,827.)

The Defendant's cost estimates in its proposal, therefore, required it to submit estimates based on accurate and current projections of costs related to the material and labor associated with building a radar according to the configuration described in the proposal and the performance requirements of the subcontract. Any subsequent modifications of the contract involving cost impact different from that initially estimated would also be subject to the provisions of TINA. See Giacoletto Deposition, Plaintiff's Exhibit 12, pp.54:4-64:24. There is no evidence, however, that such a "modification" certificate, relevant to the allegations in this case was ever submitted.

The actual price proposal submitted by the Defendant, in fact, lists specific estimates for the cost of hardware related to the B-2 FSD Program, Plaintiff's Exhibit 13. The proposal stated that the prices presented "represented the total program as revised by... the added program hardware." The price for hardware was listed as a specific line item, in addition to systems engineering and manufacturing, to the dollar. The tasks, related to direct labor and material cost, were equally broken down by line items to the dollar. Under "limited production pieces", the following "assumption" was made: "Prices reflect the configuration described in the June 1982 program meeting." In the "Hardware Quantity Change" por-

tion of the proposal, each of the configuration units and the quantity of each is set forth showing an increase in price from the earlier BAFO ("Best and Final Offer") based on quantity. A comparison of the earlier BAFO price estimates and the later formal proposal estimates per Work Breakdown Structure (WBS) shows at WBS "C" "Hardware" no change in the cost of hardware "design". The only cost pool stated is for "overhead pools", an indirect cost, as opposed to direct cost estimates for labor and material which shows no proposed direct cost pool.

In addition to the cost breakdown in the formal proposal, DD form 633's were attached. Plaintiff's Exhibit 14. DD form 633 are standardized Government forms required to be submitted with formal proposals. The DD form 633's attached to the proposal and signed by J. R. Rohlinger for Hughes Radar Systems Group represented the following:

1. that the proposal was consistent with the Defendant's established estimating and accounting practices and procedures and DAR XV cost principles;
2. that the procurement action was consistent with CASB ("Cost Accounting Standards Board") regulations;
3. that the Defendant had submitted a CASB disclosure statement;
4. that no aspect of the proposal was inconsistent with the Defendant's disclosed practices or applicable cost accounting standards.

* * * *

Defendant's "Uncontroverted Fact" No. 139:

The Government has never raised any question regarding whether Hughes allocated the shared costs in accordance with the terms of the commonality agreements.

Plaintiff's Response to "Uncontroverted Fact No. 139:

Controverted.

Plaintiff's Separate Statement of Material Facts:

The Government has clearly raised questions since 1985 with regard to Hughes' accounting practices in accordance with its Commonality Agreements. While the Government may not have directed its concern to whether or not Hughes violated its own internal cost pooling scheme, is irrelevant. The fact that the Government reviewed charges, found millions of dollars in overcharges, reviewed the agreements, and reviewed results of those agreements that were made available by Hughes, certainly indicates that the Government questioned the compliance of these activities with applicable regulations.

The Defendant is attempting here to close the loop of its scheme to defraud the Government, and ask the Court to join on a final, last-ditch leap of faith to the conclusion that the "Commonality Agreements" are some form of legitimate document, wherein Hughes unilaterally authorized itself to commingle costs and submit claims for those costs to whichever customers, and whichever amounts or percentage allocations it deemed appropriate.

ACO Reilly, in his deposition, testified that he had found that prior to the amendment of the Defendant's CAS Disclosure Statement in 1984, the Disclosure Statement submitted did not address the allocation of development costs. Mr. Reilly testified that the CAS 401 disclosure submitted by Hughes was still being reviewed for compliance by the Department of Defense as it related to the manner in which Hughes had priced and charged its contracts at the time that he released the withheld funds.

Based on the self described limited reviews of the DLA and DCAA, ACO Reilly mistakenly made this leap, but continues to hold on to the rope he tied to the potential for the Government's recovery in this False Claims lawsuit - "First,

the Government does not waive rights to a share in any settlement resulting from the parallel *qui tam* action in the event the realtors' case is successful" as stated in Reilly's November 14, 1991, letter to release the suspended B-2 radar development costs. (See *supra*; Reilly Deposition, Page 42:24 through Page 43:08).

DATED: January 6, 1992

LAW OFFICES OF HERBERT HAFIF

By: /s/ P. Benson
 PHILIP E. BENSON
 Attorneys for *Qui Tam* Plaintiff
 WILLIAM J. SCHUMER

DECLARATION OF DUDLEY SLATER
IN SUPPORT OF HUGHES' MOTION TO DISMISS
PURSUANT TO F.R.C.P. 12(b) (1) and 12(h) (3)

I, Dudley Slater, declare and say:

1. Between 1966 and 1988, I was employed by the Defense Contract Audit Agency ("DCAA") an agency of the United States Government. In 1973, I was a DCAA auditor at Hughes Aircraft Company's ("Hughes"), Culver City, California location which, at that time, was Hughes' corporate office. During this time, I was a supervisory auditor and had responsibility to oversee, among other things, different pricing issues, operations audits, and the audit of price proposals. In 1981, I transferred from Hughes' corporate office to the Pasadena branch office of the DCAA where I became a branch manager. In August of 1983, I transferred back to Hughes' corporate office as the resident auditor until I retired in December of 1988. In that capacity, the other DCAA personnel who were assigned to Hughes reported to me. During this time, I was responsible for DCAA audits of Hughes' Radar Systems Group ("RSG"). I have personal knowledge of all of the allegations set forth herein. If called as a witness, I could and would, testify competently thereto.

2. As a former DCAA resident auditor, I am familiar with cost accounting practices and principles utilized in the defense industry. When I was the DCAA resident auditor at Hughes, I became familiar with the concept of "Commonality." "Commonality," as employed pursuant to RSG's Commonality Agreements, refers to the cost sharing among different radar programs for the development of certain radar components which are common to more than one radar program. Commonality Agreements could enable Hughes to develop and manufacture products at a reduced cost to the government. I have been aware of this cost allocation methodology practice for about seven years. Hughes' commonality

cost allocation methodology has been reviewed during the course of the audits described below and in the context of the review of Hughes' Cost Accounting Standards Disclosure Statements, also discussed below.

3. From 1984, I was aware that Hughes had utilized a "commonality arrangement" to allocate development costs among different participating programs, including the B-2, F-15 MSIP, and F-14D.

4. In late 1985 and 1986, I had knowledge that the Air Force Audit Agency conducted an audit investigation. I later learned in or about 1987 that the main issue in this audit was the charging of advanced radar equipment development costs via Commonality Agreements to the F-15 MSIP, the F-14D and the B-2 programs.

5. In response to the Air Force Audit Agency's request in March of 1986, the DCAA conducted an audit which was coordinated with the Air Force Plant Representative Office ("AFPRO") at Hughes Radar Systems Group. Included in this coordinated effort was an assessment of the validity of the government's assumption that the F-15 contract should bear the full development costs associated with Commonality, and to determine whether the Commonality Agreements were proper. The results of this Audit were reflected in the DCAA Audit Report No. 4511-7B486004.

6. Audit Report No. 4511-7B486004 reviewed costs accumulated by Hughes for the development of certain radar hardware equipment which was shared among the B-2, the F-15 MSIP, and the F-14D radar system programs. The report was not classified. These audit matters were discussed with Hughes' contract and cost accounting representatives, including Mr. Sam Balucas of Hughes. I personally reviewed and signed this audit report. A true and correct copy of this October 1986 Audit Report is attached hereto as Exhibit "A."

7. In accordance with a May 19, 1987 request, the DCAA conducted a supplemental unclassified audit to verify

the costs incurred by Hughes Radar Systems Group which were charged to its commonality pools. These charges were traced to the general ledger accounts within the F-14D, F-15 MSIP, F-18 and B-2 programs. The results of this audit were reflected in Audit Report No. 4571-7B486004S1, dated June 2, 1987 which I signed. No part of the June 2, 1987 audit report was classified. These audit matters were discussed with Mr. Sam Balucas during the course of the review. A true and correct copy of this Audit Report is attached hereto as Exhibit "B."

8. On or before September 27, 1988, I reviewed the contents of, and signed DCAA Audit Report No. 4511-8B179009. The stated purpose of the September 1988 Audit Report was to determine, among other things, whether Hughes' commonality accounting practices were part of Hughes Radar System Group's disclosed accounting practices (pursuant to cost accounting standards requirements), and to determine whether such accounting practices were "considered adequate for the allocation of common radar costs." This Audit analyzed common radar equipment cost sharing among the F-15 MSIP, F-14D, F-18 and B-2 programs. A cover letter dated November 7, 1988, from the Principal Administrative Contracting Officer to Hughes, reflects that the Audit Report was provided to Hughes personnel. The Audit matters were discussed with Hughes during the course of the Audit. A true and correct copy of this Audit Report is attached hereto as Exhibit "C."

9. On March 10, 1988, I met with Hughes personnel pursuant to the DCAA's review relating to the charging of radar costs via Commonality Agreements. This meeting related to the same subject matter of the prior audits set forth above. At this meeting, the details of the DCAA's concerns regarding the cost allocation of work on the F-14D, F-15 MSIP, F-18 and B-2 with respect to common radar equipment were discussed with Hughes' personnel in order to discover

whether the DCAA Form 1 cost disallowance in the amount of \$11.6 Million was supportable.

10. On March 22, 1988, the DCAA, AFPRO, and Hughes had another meeting pursuant to the government's ongoing audit regarding Hughes' use of Commonality Agreements to allocate the costs of certain radar equipment. I was present at this meeting.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed this 21 day of January, 1992, at Salem Oregon.

/s/ Dudley P. Slater
Dudley P. Slater

DECLARATION OF JOSEPH ROHLINGER
IN SUPPORT OF HUGHES' MOTION TO DISMISS
PURSUANT TO F.R.C.P. 12(b) (1) AND 12 (h) (3)

I, Joseph Rohlinger, declare and say:

1. I was employed by Hughes Aircraft Company ("Hughes") between 1951 and October 1, 1989. From 1976 to 1984, I held the position of Group Controller of Radar Systems Group ("RSG"). From 1984 to 1987, I held the position of Vice President and Controller for RSG. In 1987, I was promoted to Vice President of Finance for RSG. I have personal knowledge of the facts contained herein and if called as a witness, I could and would testify competently thereto.

2. I have knowledge of Hughes RSG's use of "Commonality Agreements." Pursuant to such Commonality Agreements, Hughes established cost pools both to collect the costs associated with the common tasks, and to allocate those pooled costs equitably to the benefiting contracts. Such contracts have deliverable products, i.e., radar systems, which utilize one or more of the common parts. Hughes' first Commonality cost pool was established and disclosed to the government in 1978 to allocate common hardware costs among the F-14, F-15 and F-18 contracts. Pooling began on the B-2 in the latter part of 1983.

3. In October or November of 1986, the government disclosed to Hughes' personnel a copy of Audit Report No. 4511-7B486004, dated October 16, 1986. This audit report was not classified and was distributed throughout Hughes management. I personally received and reviewed a copy of this audit report at that time. A true and correct copy of this audit report is attached hereto as Exhibit "A".

4. In the summer or fall of 1987, the government disclosed to Hughes' personnel a copy of Supplemental Audit Report No. 4511-B486004S1. I personally read and reviewed this audit report when it was disclosed to Hughes. This report

was not classified. A true and correct copy of this audit report is attached hereto as Exhibit "B".

5. As a result of the audits pertaining to Hughes' use of Commonality Agreements to share costs among the B-2, F-15 MSIP, F-18 and F-14D contracts, the Defense Contract Audit Agency ("DCAA"), in 1987, questioned Hughes' accounting treatment of \$11.8 million (later increased to \$15.4 million) in costs incurred pursuant to the Commonality Agreements and temporarily caused that sum to be withheld from payments otherwise owed to Hughes under the B-2 subcontract.

6. In a letter dated June 14, 1988, the DCAA requested Hughes to provide comments or additional supporting data related to the disclosure of costs for the development of common advanced radar equipment in order to assist in DCAA's ongoing audits and investigations relating to the use of commonality agreements to charge common radar equipment costs to related contract programs. A true and correct copy of the letter I received is attached hereto as Exhibit "C". I responded to the DCAA's June 14, 1988 letter by letter dated July 8, 1988. A true and correct copy of this letter is attached hereto as Exhibit "D".

7. On July 26, 1988, Hughes gave a briefing to government officials to explain the use of "Commonality Agreements" and related Commonality issues. Following the July 26, 1988 briefing of Hughes' cost sharing practices with respect to the B-2, F-15 MSIP, F-14D and F-18 contracts, the Air Force Plant Representative Office ("AFPRO") sent Hughes a non-classified letter dated August 3, 1988, requesting a detailed breakdown of costs incurred by Hughes and charged pursuant to the Commonality Agreements for the Analog Signal Converter ("ASC") and Radar Data Processor ("RDP"). A true and correct copy of the August 3, 1988 letter is attached hereto as Exhibit "E". The AFPRO's inquiry focused on all aspects of the Commonality transactions—charges for part numbers during various development

stages and time periods, charges to the Commonality pools and allocations to the various contracts. Hughes responded to its inquiry to its satisfaction.

8. In 1988, the DCAA disclosed to Hughes that it was conducting another audit regarding Hughes' use of commonality agreements for the allocation of common radar costs at RSG. This audit culminated in Audit Report No. 4511-8B179009 dated September 27, 1988. Audit Report No. 4511-8B179009 was disclosed to me via cover letter dated November 7, 1988, from Thomas R. Tremper of the AFPRO. The Audit Report addressed alleged non-compliance with of commonality accounting practices for allocation of common radar costs at RSG. This Audit Report contained two attachments. A true and correct copy of this cover letter with the attached September 27, 1988 Audit Report and its accompanying attachments are attached hereto as Exhibit "F".

9. The September 27, 1988 Audit Report incorporated the findings of the October 16, 1986 audit report (described in paragraph 3 above) which had stated that commonality costs were allocated monthly to the F-15, F-14D, F-18 and the B-2 programs based on internal agreements made between the applicable Hughes program managers to share the development costs of common equipment. This audit report was not classified.

10. In an unclassified letter dated November 18, 1988, Hughes responded to the government's inquiries set forth in the September 27, 1988 Audit Report. A true and correct copy of this letter is attached hereto as Exhibit "G". Pursuant to this letter, Hughes participated in more non-classified meetings with the government to address the allegations concerning Commonality mishcharging, misbidding and Cost Accounting Standard 401 non-compliance, all of which had been raised in the non-classified Audit Reports discussed above.

11. Generally, the allegations and transactions addressed in the non-classified audit reports were subjected to

extensive rebuttals prepared by Hughes employees and communicated to the government in the form of non-classified correspondence and briefing between 1986 and 1988.

12. As Group Controller, Vice President and Controller, and Vice President of Finance for Radar Systems Group, I have had experience reviewing hundreds of audit reports from the DCAA. Each and every audit report that I reviewed contained a boiler plate cover sheet relating to any Freedom of Information Act requests for audit reports similar to the one which is attached to Audit Report No. 4511-8B179009. Because the government often contacts Hughes when it receives a Freedom of Information Act request which would cover audit reports relating to Hughes and informs Hughes if it does in fact release any audit report relating to Hughes, I know that many of the audit reports relating to Hughes have been disclosed to members of the public via Freedom of Information Act Requests.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 21st day of January, 1992 at Los Angeles, California.

/s/ Joseph Rohlinger
Joseph Rohlinger

**DECLARATION OF EDWARD SAMUEL BALUCAS
IN SUPPORT OF HUGHES' MOTION TO DISMISS
PURSUANT TO F.R.C.P. 12(b)(1) AND 12 (b)(3)**

I, Edward Samuel Balucas, declare and state:

1. I make this declaration in support of Hughes' Motion to Dismiss. I have personal knowledge of all of the facts stated herein and if called as a witness, I could and would testify competently thereto.

2. From 1967 through 1989, I was an employee of Hughes Aircraft Company ("Hughes"), where I worked as an accountant in various positions. From September 1978 to August 1983, I was manager of finance for the manufacturing division. From August 1983 until my retirement in 1989, I was the manager of cost accounting for the Radar Systems Group ("RSG"). My immediate supervisor was Joseph Rohlinger who was the RSG controller at that time.

3. As manager of cost accounting, I worked closely with the Defense Contract Audit Agency ("DCAA") whenever they conducted any unclassified audits.

4. In 1986, I was aware that the DCAA was conducting an audit at RSG to review, among other things, the costs incurred for the development of advanced radar components, and the propriety of the use of Commonality Agreements to share the costs of those components among various programs and contracts. During the course of this audit, the DCAA disclosed to me the matters which it was investigating. The results of the above-referenced audit are reflected in Audit Report No. 4511-7B486004, dated October 16, 1988. This audit report was not and is not to my knowledge classified. The DCAA disclosed this audit report to Hughes in 1986. I reviewed said audit report soon after it was disclosed to Hughes.

5. In 1987, the DCAA conducted a supplemental audit to review costs charged to RSG's commonality pool accounts. The DCAA disclosed to me the audit matters involved in the above-mentioned audit. The results of this audit were reflected in the unclassified Audit Report No. 4511-B486004SI, dated June 2, 1987, a copy of which the government provided to Hughes. I personally reviewed a copy of the audit report shortly after it was received at Hughes.

6. In 1988, the DCAA conducted another audit relating to RSG's commonality accounting practices. The purpose of the review was to determine whether the commonality accounting practices were part of RSG's disclosed accounting practices in accordance with the Cost Accounting Standards. Pursuant to this audit, the DCAA reviewed the charges of common radar equipment to various contract programs including the F-15 MSIP, the F-14D, F-18 and the B-2 to determine whether such charges were proper. The DCAA disclosed the audit matters involved in that audit with myself as well as with Mr. Rohlinger and Ms. Jackie Davis, another Hughes' accountant, and Mr. William Amos, manager of commonality hardware. The results of this audit were reflected in Audit Report No. 4511-8B179009, dated September 27, 1988. Said audit report was disclosed to myself and other management at Hughes at or about the time it was issued, and was not classified. I personally reviewed this audit report.

7. As manager of cost accounting for RSG, I have reviewed many audit reports from the DCAA. Each and every audit report that I have reviewed during the past 15 years contained a boiler plate cover sheet relating to Freedom of Information Act requests similar to the cover sheets attached to the three above-mentioned audit reports. Because the government often contacts Hughes to receive Hughes' consent before it releases an audit report relating to Hughes, and informs us of any such release, I know that many of the audit

reports relating to Hughes have been disclosed to the public at large via Freedom of Information Act requests.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 21 day of January, 1992 at North Hills, California.

/s/ Edward Samuel Balucas
Edward Samuel Balucas

DECLARATION OF HOWARD STONE
IN SUPPORT OF HUGHES' MOTION TO DISMISS
PURSUANT TO F.R.C.P. 12(b) (1) AND 12(h) (3)

I, Howard Stone, declare and state:

1. I am employed by Hughes Aircraft Company ("Hughes") and have been employed by Hughes since 1962 when I started work as program controls administrator. By the early 1980's, I had progressed to manager of division operations and at that time I worked on classified programs. I have personal knowledge of all the allegations and facts stated herein and if called as a witness, I could and would testify competently thereto.

2. As a representative from the program office for special projects, I attended a meeting on March 10, 1988 with the Defense Contract Audit Agency ("DCAA") regarding the Hughes' Radar System Group's ("RSG") cost allocation of common radar equipment via Commonality Agreements on the F-15 MSIP and the B-2 contract programs. This meeting was held as a result of the DCAA Form 1 notice of disallowance which had been issued on December 10, 1987, and which suspended \$11.6 million in costs charged to the B-2 contract program based on questions raised by DCAA regarding the validity of this cost-sharing practice. During this meeting, the DCAA disclosed to Hughes information relating to said audit and investigation. I do not believe that this March 10, 1988 meeting was classified.

3. During this March 10, 1988 meeting, the DCAA and Hughes' representatives discussed the facts and circumstances relating to the Commonality Agreements pertaining to the B-2 contract and the F-15 MSIP contracts. The attendees also discussed the DCAA's concern that the Commonality Agreements resulted in the F-15 program not bearing the full costs of the receiver/exciter. DCAA also discussed its concerns with the cost allocations and charges made pursuant

to the Commonality agreements for the Analog Signal Converter. I was present at this meeting.

4. The highlights of this meeting were documented in a "contact report" which I reviewed. A true and correct copy of which is attached hereto as Exhibit "A". The contact report reflects that two copies were sent to "Contracts". The contents of this "contact report" are an accurate reflection of some of the topics that were discussed at the March 10, 1988 meeting. This "contact report" was not classified when drafted and is not now.

5. On March 22, 1988, Air Force Plant Representative Office, the DCAA, and Hughes, at the request of the DCAA, had another meeting to discuss issues similar to the issues discussed at the above-reference March 10, 1988 meeting. The purpose of this meeting was to follow up on the March 10, 1988 meeting and to continue the discussion regarding cost charging for the Analog Signal Converter between the B-2 and F-15 MSIP programs. There was substantial discussion between the parties at this meeting of Hughes' 1983 F-15 MSIP pricing proposal which included the gate array enhanced Analog Signal Converter. During this meeting, the DCAA indicated that one of its concerns was whether Hughes should have made reductions to the proposed prices of the participating contracts when common development activities were identified. I do not believe that the meeting was classified. Seven people from Hughes Aircraft Company were present at this meeting including myself.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 22 day of January, 1992, at El Segundo, California.

Howard Stone

* * * *

DECLARATION OF JOSEPH ROHLINGER

I, Joseph Rohlinger, declare and say:

1. I was employed by Hughes Aircraft Company ("Hughes") between 1951 and October 1, 1989. From 1976 to 1984, I held the position of Group Controller of Radar Systems Group ("RSG"). From 1984 to 1987, I held the position of Vice President and Controller for RSG. In 1987, I was promoted to Vice President of Finance for RSG. I have personal knowledge of the facts contained herein and if called as a witness, I could and would testify competently thereto.

* * * *

42. Following the Air Force's audit, the AFPRO issued a report dated September 30, 1986, which I received a copy of shortly after its issuance, which concluded that the F-15 MSIP should have borne all of the development costs for the ASC which were allocated pursuant to Hughes' Commonality Agreements. The AFPRO's findings were incorporated into a Defense Contract Audit Agency ("DCAA") audit report dated October 16, 1986, which I also received shortly after its issuance. See September 30, 1986 AFPRO Report and October 16, 1986 DCAA Audit, copies of which are filed concurrently herewith as Exhibits 63 and 64 respectively.

43. The government continued to review Hughes' Commonality Agreements and accounting practices and I and other Hughes representatives met with the AFPRO and DCAA on numerous occasions to assist them in gathering facts. Hughes attempted to convey the chronology of events to the government auditors and the AFPRO which showed that the effort to design and develop the gate array enhanced ASC began in the Spring of 1982 on the B-2 contract, nearly two years prior to Hughes receiving authorization for that development effort under the second F-15 MSIP contract, Purchase Order E31011R.

* * * *

DECLARATION OF JOHN F. WILSON
IN SUPPORT OF HUGHES' MOTION TO DISMISS
PURSUANT TO F.R.C.P. 12(b) (1) AND 12(h) (3)

I, John F. Wilson, declare and state:

1. I am Director of Contracts for the Radar Systems Group of Hughes Aircraft Company ("Hughes"). I have been employed by Hughes since 1972 and have been in the Contracts organization since the inception of the Radar Systems Group ("RSG"). I became Associate Director of Contracts for the RSG in May 1984. I have been Director of Contracts for the RSG for six years, since January 1986. I have personal knowledge of the facts contained herein and if called as a witness, I could and would testify competently thereto.

2. In 1982, Hughes and Northrop Corporation entered into a cost-reimbursement type subcontract under which Hughes agreed to design and develop a complex, new radar for the B-2 Bomber. The B-2 contract and this subcontract were at that time highly classified. The B-2 aircraft was secretly under development by Northrop for the U.S. Air Force. Under this B-2 radar subcontract, Northrop agreed to pay Hughes its costs and a fee measured in part by the level of costs Hughes incurred under the subcontract (*i.e.*, a cost-plus-incentive-fee contract). At the request of U.S. Air Force officials and senior Northrop employees, Hughes designed and developed radar components for the B-2 which could be used in several different aircraft radars also made by Hughes.

3. When common parts are designed, developed or manufactured for use under several different radar subcontracts, the costs of such design and development must be appropriately accounted for. Since 1978, Hughes has accounted for such costs by allocating them among the different benefiting subcontracts to ensure that each benefiting subcontract absorbs its fair share of the costs. The accounting controls and cost sharing arrangements were established by

Hughes for each radar program and were set forth in Hughes' Commonality Agreements.

4. During the course of a series of government audits and investigations of Hughes relating to the B-2 subcontract, a dispute arose with the government involving Hughes' method of accounting for costs incurred by Hughes to design and develop certain radar components that were ultimately utilized not only in the B-2 radar but in other Hughes' radars as well.

5. Because of the extraordinary secrecy surrounding the B-2 program during the 1980's, certain government auditors mistakenly concluded that Hughes had been contractually obligated to develop certain components for the F-15 Multistage Improvement Program ("MSIP") radar subcontract and had mischarged part of the costs of that effort from the F-15 MSIP subcontract to the B-2, the F-14D and the F-18 subcontracts pursuant to the Commonality Agreements. This conclusion was first alluded to in Air Force Audit Report No. 86-5 which was then classified.

6. On July 30, 1986, Hughes received a copy of the classified Air Force Audit Report No. 86-5, a true and correct copy of which is attached hereto as Exhibit "A".

7. Following this initial classified audit conducted by the Air Force, a series of non-classified government audits and investigations were conducted and openly discussed with Hughes' representatives throughout the period of 1986 to 1988.

8. Hughes received a copy of unclassified Audit Report No. 4511-7B486004 dated October 10, 1986 from the government. This Audit Report was disclosed to Hughes management without any classified or secret restrictions. I read the October 1986 Audit Report from the DCAA. It pertains to the same issues as the classified Audit Report No. 86-5 referred to above.

9. Hughes RSG received a copy of Audit Report No. 4511-B486004SI, dated June 2, 1987 from the government. This Audit Report was disclosed to Hughes management and had no classified restrictions. I also read that Audit Report.

10. As a result of the Audit Reports described above, the government directed Northrop to withhold \$11.8 million in costs under the Hughes B-2 subcontract which was reflected in the December 10, 1987 DCAA Form 1, a true and correct copy of this document is attached hereto as Exhibit "B". The government subsequently directed the amount of money withheld to be increased to \$15.4 million.

11. On July 26, 1988, Hughes gave a briefing to fourteen government officials representing the Air Force Plant Representative Office ("AFPRO"), the Defense Contract Audit Agency ("DCAA"), the Air Force program offices for the B-2 and F-15 programs and the Navy program offices for the F-14 and F-18 programs to explain the Commonality Agreements, the accounting system, the contract pricing, the contract terms, the timing of contractual authorizations, and the resulting cost benefits to the government. I was present at this briefing. The briefing (none of which was classified) addressed all aspects of the Commonality issues.

12. In November of 1988, I received from the AFPRO the September 27, 1988 DCAA Audit Report No. 4511-8B179009 which pertained to essentially the same matters as did the 86-5 classified Audit Report and the October 16, 1986 unclassified Audit Report. This Audit Report had no secret or classified restrictions and was distributed through RSG's management.

13. In 1988, representatives of the government and RSG, including myself, engaged in open dialogue regarding the Commonality issues. This was an important substantial issue for RSG, management in 1988 and received a great deal of attention. RSG's management, including William Schumer, was aware of the allegations raised by the government

concerning RSG's commonality accounting practices and cost allocations because of the importance of the issue and frequency with which it was discussed.

14. In response to both the government's withholding of money from Hughes, and the questions raised in the government's audit reports and investigation of the Commonality issues, Hughes submitted a formal claim to the government, under Northrop's sponsorship pursuant to the Contract Disputes Act. Hughes' claim, received by the government in October 1991, explained: (a) the propriety of the cost allocations made pursuant to the Commonality Agreements; (b) the fact that the Commonality Agreements had been disclosed to Northrop and to the government; (c) the propriety of the Commonality accounting methodology; and (d) the overall cost benefit to the government which was intended and achieved. Hughes' claim to the government was paid in full on December 2, 1991, and all withheld monies were returned to Hughes.

15. As Director of Contracts for RSG, I am familiar with the job responsibilities of Manager Major Program, Contracts, and Division Manager of Contracts for Hughes RSG Special Programs, which are the positions that William J. Schumer held at RSG between 1981 and 1988. From May 1984 to September 1988, during which time I was the Associate Director of Contracts and then in 1986, the Director of Contracts for RSG, Schumer directly reported to me. The job responsibilities of Mr. Schumer in the above job positions only pertained to the contract administration, negotiations and related work on the B-2 subcontract with Northrop and other small classified projects. Mr. Schumer did not work on any F-14D, F-15 MSIP or F-18 contract programs. His job responsibilities did not include or relate to the charging of common radar costs to various contracts and/or programs.

16. I have read Mr. Schumer's First Amended Complaint, Case No. CV89-0390. Mr. Schumer's job responsibilities at RSG would not give him direct knowledge of the

material allegations in his First Amended Complaint concerning Hughes' bids on the F-15 MSIP, F-14D and F-18 contracts or costs charged pursuant to the Commonality Agreements.

17. I have read and reviewed Mr. Schumer's Disclosure Statement served on the government. A true and correct copy of the Disclosure Statement to which I am referring is attached hereto as Exhibit "C". An unsigned memorandum dated March 15, 1985 from K.M. Tasugi to me is attached to said Disclosure Statement as Exhibit A. Schumer was not involved in any way with the authorship of this March 15, 1985 memorandum nor was it intended for his review. Mr. Schumer's job responsibilities at Hughes would not have given him direct knowledge of the material matters contained in said memorandum.

I have under penalty of perjury that the foregoing is true and correct.

Executed this 23rd day of January, 1992 at El Segundo, California.

/s/ John F. Wilson
John F. Wilson

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

(cover page omitted in printing)

I.

INTRODUCTION

Defendant Hughes Aircraft Company ("Hughes") moves to dismiss this *qui tam* lawsuit for lack of subject matter jurisdiction on the grounds (1) that Schumer's complaint is based upon allegations and transactions which were publicly disclosed prior to the filing of this action in a series of unclassified government audits and investigations, and (2) that Schumer is not an original source of that publicly disclosed information.¹

Schumer complains that Hughes mischarged costs to develop radar equipment which would be used in four different aircraft radar subcontract programs. Specifically, Schumer alleges that costs which should have been charged to an F-15 contract were improperly charged to the B-2, F-14, and F-18 contracts. The mischarging was allegedly carried out by means of so-called "secret" Commonality Agreements, which allocated costs incurred for efforts that benefit more than one contract.

Schumer has relied upon the fact the government withheld \$15.4 million from Hughes while it investigated Hughes' cost allocations. The investigation resulted in the Government approving Hughes' cost allocations and paying to Hughes the entire amount.

¹ The suit was filed under the Civil False Claims Act, 31 U.S.C. § 3729, *et seq.* ("FCA"). Suits based on such public information are jurisdictionally barred unless the plaintiff can demonstrate that he is an "original source" of the public information. 31 U.S.C. § 3730(e)(4).

This motion will demonstrate that Schumer's allegations are based on matters that were the subject of publicly disclosed unclassified audit reports and other unclassified communications from the government.² Moreover, Schumer admits that he was not an original source of the information that was the subject of these public disclosures.³

A. Background

1. The B-2 Subcontract.

In 1982, Hughes and Northrop Corporation entered into a cost-reimbursement type subcontract under which Hughes promised to design and develop a complex new radar for the B-2 Bomber, then under secret development by Northrop for the U.S. Air Force. Under this B-2 radar subcontract, Northrop promised to reimburse Hughes for its costs and to pay a reasonable profit. At the request of U.S. Air Force officials and senior Northrop employees, Hughes designed and developed radar components for the B-2 which could be used in several different aircraft radars also made by Hughes. (Declaration of John Wilson ("Wilson Decl."), ¶ 2, attached hereto as Exhibit 3.) Hughes thereby advanced the state of the art, and found new applications for existing technology.

During the course of a series of government audits and investigations of Hughes relating to the B-2 subcontract, a dispute arose with the government involving Hughes' method of accounting for costs incurred by Hughes to design and

² In 1990, Hughes moved for summary judgment based on the release of a single classified Air Force audit report to Hughes and Northrop. The Court held that classified report was not "publicly disclosed." This motion does not involve that classified report.

³ Hughes has filed, simultaneously with the instant motion, a motion for summary judgment which demonstrates the complete lack of merit in Schumer's complaint. The Court may properly dismiss this case in its entirety on the jurisdictional issues addressed in the instant motion without deciding Hughes' other motion.

develop certain radar components used not only in the B-2 radar but in other Hughes' radars as well. (Wilson Decl., ¶ 4.) This same dispute is the essence of Schumer's complaint.

* * * *

Herbert Hafif, Bar No. 27311
 Phillip E. Benson, Bar No. 097420
 Jesse L. Young, Bar No. 123763
 Linda R. MacLean, Bar. No. 101002
 Greg Hafif, Bar No. 149515
 LAW OFFICES OF HERBERT HAFIF
 269 West Bonita Avenue
 Claremont, California 91711
 (714) 624-1671

Attorneys for *Qui Tam* Plaintiff
 WILLIAM J. SCHUMER

UNITED STATES DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,)
ex rel., WILLIAM J. SCHUMER,	)Case No.
	)CV 89-0390 MRP (Bx)
Plaintiff,)
	)QUI TAM PLAIN-
v.	) TIFF'S MEMORAN-
	) DUM OF POINTS
HUGHES AIRCRAFT COM-	) AND AUTHORITIES
PANY,	) IN OPPOSITION TO
	) DEFENDANT'S
Defendants.	) MOTION FOR SUM-
	) MARY JUDGMENT
_____)

I.

INTRODUCTION

This memorandum will be brief. Conversely, the *Qui Tam* Plaintiff's separate statement of Material Facts is rather

detailed. It is not the purpose to this memorandum to minutely reiterate the factual matters covered in the separate statement of material facts, but rather to highlight some of the points raised in the separate statement that reveal the shallow spin, selectively culled facts, twisted sequence, and manipulative use of precisely placed wording to attempt to develop a scenario which is simply contrary to the actual events that took place giving rise to this action.

II.

BRIEF SUMMARY OF MATERIAL FACTS⁴

This case involves, primarily, the cost pooling of direct labor costs associated with the development and production of various radar modules for the F-15, F-14 and B-2 aircraft.

In the late seventies and early eighties, Hughes had been involved in various development and production programs involving the F-15 and F-18 radar systems. It was at this time that it negotiated for and was awarded the B-2 radar subcontract.

Hughes' receipt of the B-2 radar subcontract was premised on its ability to bring to the program a number of existing radar modules, which together make up the entire radar, at minimal development costs. Most estimated development costs related to the antenna and required interfaces between the various "existing technology" "off the shelf" modules. Hughes represented that these modules would be obtained from F-15 and F-18 designs.

At the time Hughes received the B-2 contract, the mission profile was fixed and remained so. That mission profile required the B-2 radar to operate at high and low altitudes. At about the same time, a new F-15 Multi-stage

⁴ The Qui Tam plaintiff incorporates, herein, by reference, those factual matters set forth in his separate statement of material facts, filed concurrently herewith.

Improvement Program was directed, first, at studying improvements and, secondly, at developing improvements. After the B-2 contract was definitized in October 1982, Hughes was successful in convincing Northrop to change to the newer F-15 modules on the basis that the F-15 program would continue to pay for the development costs for these modules.

Two radar modules from the F-15 program are pertinent to this case, one is the Analog Signal Converter ("ASC"). The other is the Radar Data Processor ("RDP").

In 1982 and 1983, Hughes conducted an ongoing "study effort" relating to combining two modules, including the receiver/exciter into one ASC. The study effort included a look at new micro-circuitry, called gate arrays. This study effort was funded by the F-15 program. In early 1989, the prime contractor gave the full go-ahead to Hughes, with coverage for prior F-15 gate array development efforts, for the use of gate array technology.

Hughes mischarged gate array F-15 development efforts to the B-2 subcontract. Hughes subsequently rationalized this mischarging to the Air Force by claiming that the Air Force "approved" the "development" of gate array technology for the B-2 prior to the point in time in which such technology was approved in the F-15 program. As the separate statement of material facts points out, this is a facade. In fact, Hughes could not have charged gate array development efforts to the B-2 for a variety of reasons, including the fact that gate array technology represented the utilization of unqualified gate array which required Hughes to seek qualification before use. There is no evidence that Hughes ever sought to qualify this unqualified technology for the B-2, unlike Hughes' full written gate array change proposals directed specifically to the prime contractor for the F-15. Secondly, in its formal gate array cost proposals to the prime contractor on the F-15, Hughes certified that no prior "actuals" (prior labor

hours) existed for the purpose of estimating the gate array efforts.

The means in which Hughes mischarged development efforts for the F-15 radar data processor was equally deceptive. Basically, Hughes established an internal criteria which arbitrarily set the baseline between the development stage and the production stage of the F-15 at an earlier point than addressed in the contract, it's own representations to Northrop, the prime contractor, and the Air Force, and applicable military standards and regulations. It then called development efforts production/fabrication efforts and mischarged to the B-2 contract, accordingly.

Hughes, eventually, pulled the F-14 program into this loop with representations regarding existing F-15 technology.

The manner in which this mischarging occurred and the vehicle employed was through internal/unilateral "memorandums of agreement" (MOA") between internal Hughes project managers which set forth a cost pooling scheme involving direct material and labor costs. These cost pooling or cost sharing internal memorandums were entirely inconsistent to the manner in which Hughes had certified, proposed and estimated it's proposals for the B-2 and F-15 radar sub-contracts and remained unknown to the cognizant Northrop B-2 subcontracts manager until mid 1984 when Hughes' accounts "started to blow." Hughes was already engaged in this cost pooling scheme with the F-14 subcontract before it even finalized it's proposal and only informed Grumman, the prime contractor, after the government began an audit.

During the course of the F-15, B-2 and F-14 subcontracts, Hughes submitted weekly invoices for payment that misrepresented to the prime contractors that the direct labor and material costs set forth in these invoices represented costs accumulated in compliance with the applicable contract. These contracts incorporated Cost Accounting Standards, including CAS 401, and were premised on the incorporation of

existing/non-developmental technology. These invoices represent false claims for payment pursuant to 31 USC §3729.

III.

HUGHES COSTS POOLING WAS NOT ALLOWABLE AND WAS INCONSISTENT TO THE MANNER IN WHICH IT NEGOTIATED THE RADAR SUBCONTRACTS

Cost Accounting Standard ("CAS") 401, incorporated in the B-2 and F-15 subcontracts, states that a contractor's practices used in estimating costs in pricing a proposal shall be consistent with his cost accounting practices used in accumulating and reporting costs. FAR 30.401-40(a). Further, a contractor's cost accounting practices used in accumulating and reporting actual costs for a contract shall be consistent with his practices used in estimating costs in pricing the related proposal.

Hughes estimated and proposed the B-2 subcontract based on efforts associated with incorporating existing radar technology with respect to the Analog Signal Converter and Radar Data Processor. It did not propose or estimate costs or effort associated with the development of such systems and it did not propose or estimate costs on the basis of any "cost pooling" or "cost sharing" arrangement with unilateral and arbitrarily assessed share percentages with other programs. It did not propose and estimate the F-15 subcontracts on the basis of any such cost-sharing arrangement.

Hughes billed the prime contractors on the basis of the terms and conditions of it's contracts. These invoices did not disclose any "cost sharing" arrangement, the percentage of effort divided by virtue of these arrangements, or the programs in which such efforts and funds were divided. The invoices violated CAS 401, the applicable provision in the contract, including flow-down cost segregability clauses in the B-2 contract, and represented false claims for payment.

Hughes' cost pooling shared costs, therefore, were unallowable. Allowable costs are defined as follows:

"The factors to be considered in determining whether a cost is allowable include the following:

- (1) Reasonableness.
- (2) Allocability.
- (3) Standards Promulgated by the CAS Board, if applicable; otherwise, generally accepted accounting practices appropriate for the particular circumstances.
- (4) Terms of the contract.
- (5) Any limitations set forth in this sub-part." FAR 31-201-2(a).

In its brief, Hughes sets forth the definition of "allocability" which is found at FAR 31-201-4 but fails to clearly identify "allocability" as merely a subset of "allowability." Even under the definition of allocability, a cost is allocable if it is incurred specifically for the contract. Charging the B-2 Program for F-15 development efforts did not include efforts that were incurred specifically for the B-2 contract.

IV.

THE GOVERNMENT HAS NOT RESOLVED
ANY FALSE CLAIMS ACT VIOLATION WITH THE
DEFENDANT

Hughes attempts to paint the government satisfied with its own explanation of events and, therefore, it argues, the case should be dismissed. The government has, however, continued to preserve its claim over any recovery obtained in this case and has specifically left open the issue of any CAS violations. Furthermore, the administrative contracting officers that are now "satisfied" with Hughes' explanation and have "resolved", according to the defendant, any outstanding issues in Hughes' favor simply have no jurisdiction or authority to determine or adjudicate issues of fraud or violations of the False Claims Act.

An action for fraud or a violation of the False Claims Act against a contractor is not subject to a contracting officer's decision. See *Martin J. Simko Constr. Co. v. United States*, 852 F.2d 540 (Fed.Cir. 1988); *Chinook Research Laboratories, Inc. v. United States*, 22 cl. ct. 853, 856, fn.3 (1991).

V.

CONCLUSION

For the foregoing reasons, the defendant's motion for summary judgment should be denied.

DATED: February 18, 1992

LAW OFFICES OF HERBERT HAFIF

By: /s/ P. Benson
Phillip E. Benson

DECLARATION OF WILLIAM J. SCHUMER

I, William J. Schumer, declare as follows:

1. I came to Hughes Radar Systems group on May 1, 1981 with the title of Manager, Major Program Contracts. I was formally accessed to the B-2 Program in September of 1981, prior to Hughes being notified that they had been selected.

* * *

33. With regard to P5, ¶13 of the original complaint the fact that my personal recollection was faulty and I cited the F-18 rather than F-14 is the result of, and confirms the fact that, I had seen no audit reports at the time this qui tam suit was filed.

* * *

(g) With respect to ¶8, P.3 L.21 to P.4, L.8 - again, this Exhibit 1C does not refer to the B2. On September 2, 1988, my HAC employee badge was taken from me, the locks on my files and office door were changed, and I was escorted off the RSG premises, so I obviously could not have been aware of any September 27 meetings, nor the audit report dated September 27, but not conveyed to HAC until November 7, 1988 (Bates #000048).

* * * *

**SUPPLEMENTAL DECLARATION OF
JOHN F. WILSON IN SUPPORT OF HUGHES'
REPLY TO SCHUMER'S OPPOSITION TO
MOTION TO DISMISS**

I, John F. Wilson, declare and state:

1. I am Director of Contracts for the Radar Systems Group of Hughes Aircraft Company ("Hughes"). I have been employed by Hughes since 1972 and have been in the Contracts organization since the inception of the Radar Systems Group ("RSG"). I became Associate Director of Contracts for the RSG in May 1984. I have been Director of Contracts for the RSG for six years, since January 1986. I have personal knowledge of the facts contained herein and if called as a witness, I could and would testify competently thereto.

2. During my employ at Hughes, I had knowledge of the nomenclature used for the B-2 contract during the time it was classified and after. Due to its once classified nature, the B-2 subcontract was often referred to as the "Special Project" program or "AHEP" program. Thus, such terms utilized in the unclassified audit reports referred to in my original declaration in support of Hughes' Motion to Dismiss are synonymous with the B-2 program.

3. In March of 1991, I received a letter from Thomas E. Woolpert of the Defense Plant Representative Office informing me of a Freedom of Information Act ("FOIA") Request from Pace, Quinn and Rose ("PACE"), then Schumer's counsel in the above-referenced action. In this letter, Mr. Woolpert requested that Hughes review the documents requested by PACE to determine if such documents were exempt under 5 U.S.C. § 552(b)(4). A true and correct copy of the March 25, 1991 letter I received and reviewed is attached hereto as Exhibit A. As set forth in the letter, the list of documents subject to the FOIA request included the October 1986, June 1987 and September 1988 audit reports referred to in

Hughes' Motion to Dismiss and in my early Declaration in support thereof.

4. Pursuant to said March 25, 1991 letter, Hughes did, in fact, review the audit reports requested. Upon such review, Hughes decided not to claim that such documents were exempt under the Freedom of Informations Act and indicated to the government that it had no objections to disclosure under the FOIA. A true and correct copy of the letter I sent to the government which expressed Hughes' consent to the disclosure of the requested documents via the FOIA is attached hereto as Exhibit B.

5. I am informed and believe that the government did, in fact, disclose the requested documents to Schumer's counsel pursuant to its FOIA request.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 26 day of February, 1992 at El Segundo, California

/s/ John F. Wilson
John F. Wilson

* * * * *

DECLARATION OF YVONNE PERLBERG
IN SUPPORT OF HUGHES' REPLY TO SCHUMER'S
OPPOSITION TO MOTION TO DISMISS

I, Yvonne Perlberg, declare and state:

1. I am currently Director of Government Liaison and Contract Compliance at Hughes Aircraft Company ("Hughes"), and have been an employee at Hughes since 1988. Prior to my employment at Hughes, I worked for the Defense Contract Audit Agency ("DCAA") for 20 years, between 1968 and 1988. My last position with the DCAA was Deputy Regional Director for the Southwestern Region. I have personal knowledge of the matters stated herein and if called as a witness, I could and would testify competently thereto.

2. From the 20 years of experience I gained while working for the DCAA, and during the course of my employment at Hughes, I have become familiar with and do have personal knowledge of the procedure for the conducting of audits and the disclosure of audit reports. An audit report is considered an internal government document and is normally disclosed only within the Department of Defense, except (i) to an agency requesting the report in negotiating or administering its contract or (ii) to U.S. Government investigatory agencies. Generally, the DCAA will only disclose audit reports or the matters stated therein to (i) the requester of the audit and (ii) the subject of the audit. It is not the DCAA's policy to disclose the subject matter of audits and/or the audit reports themselves to the public. Under the provisions of Title 32, Code of Federal Regulations, Part 290.26(b)(2), any Freedom of Information Act requests for audit reports received by the DCAA are referred to the cognizant contracting agency for determination as to releasability and a direct response to the requester. Audit reports and/or matters stated therein (i) are not intended to be disclosed and are generally not disclosed to

the public at large and (ii) are not disseminated through news media or other methods of public dissemination.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 28th day of February, 1992 at Los Angeles, California.

/s/ Yvonne Perlberg

Yvonne Perlberg

JAMES J. GALLAGHER
FRED D. HEATHER
MARK R. TROY
AMANDA M. MARKS
McKENNA & CUNEO
444 South Flower Street, 8th Floor
Los Angeles, California 90071
(213) 688-1000

Attorneys for Defendant
HUGHES AIRCRAFT COMPANY

**UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA**

UNITED STATES OF AMERICA,) Civil No. CV 89-0390-
ex rel., WILLIAM J.) MRP (Bx)
SCHUMER,)

Plaintiff,)

vs.)

HUGHES AIRCRAFT COMPANY)

Defendant.)

) DEFENDANT
) HUGHES AIRCRAFT
) COMPANY'S
) REPLY TO
) PLAINTIFF'S
) OPPOSITION TO
) MOTION FOR
) SUMMARY
) JUDGMENT
)
) Date: March 9, 1992
) Time: 10:00 a.m.
) Courtroom: Hon.
) Mariana R.
) Pfaelzer

* * * *

III. SCHUMER'S OPPOSITION SHOWS THAT HE HAS SHIFTED HIS THEORY TO ANOTHER UNSUPPORTABLE CONCEPT.

Having recognized that he cannot proffer any evidence to support the allegations in his complaint regarding misbidding and mischarging costs, Schumer has, in his opposition brief, alleged a new theory which is also unsupported and without merit. He asserts that Hughes did not estimate its bid costs in a manner consistent with the way costs were accumulated, and that this supposed inconsistency was in violation of Cost Accounting Standard ("CAS") 401, 48 CFR § 30.401.

The assertion that Hughes violated CAS 401 is not contained in Schumer's complaint and is unrelated to the allegations contained therein.¹⁹ Therefore, it is outside the scope of this suit, and not relevant to Hughes' motion for summary judgment. The nonmoving party cannot raise genuine issues of fact in an effort to defeat summary judgment by addressing matters beyond the scope of the complaint. *United States ex rel. Sacks v. Philadelphia Health Management Corp.*, *supra*, 519 F. Supp. At 845.

In addition to being outside the scope of the complaint, Schumer's assertion that Hughes violated CAS 401 is also unsupported and wrong. The provision cited in Schumer's brief states in its entirety:

A contractor's practices used in estimating costs in a pricing proposal shall be consistent with his costs accounting practices used in accumulating and reporting costs.

¹⁹ Schumer's proposed amended complaint also does not contain or refer in any way to this allegation.

48 CFR § 30.401-40(a). Schumer's theory is that because Hughes' original technical proposal for the B-2 radar referenced the utilization of an ASC and RDP that were "off the shelf" (i.e. already developed), Hughes' development of new components in lieu of using the "off the shelf" components resulted in costs charged to the B-2 that were not "consistent" with Hughes' proposed costs.²⁰

Schumer would have the Court believe that CAS requires a product to be built in the same manner in which it was proposed or estimated. That is not what CAS 401 requires. CAS 401 is concerned with insuring that a contractor's "accounting practices" used in estimating costs for a proposal are consistent with the practices used in accumulating the costs.²¹ There is no requirement in CAS 401 that the product built must be just as it was proposed. There is also no requirement, as seems to be implied by Schumer, that costs "accumulated" on a contract cannot exceed the amount "estimated" in a proposal.

Hughes' obligation under CAS 401 was to "accumulate and report" the actual costs incurred in achieving the performance requirements of the contract; it was also required to "estimate" the cost of achieving the performance requirements of the contract. Hughes did both; therefore, there is no inconsistency as contemplated by CAS 401 in Hughes' estimating, on the one hand, and accumulating and reporting, on the other, its costs of achieving the performance specifications on the B-2 subcontract.

Schumer's theory is based not only upon a misreading of CAS 401 but on a mischaracterization of the B-2

²⁰ Plaintiff's Separate Statement of Material Facts, responding to Fact No. 21. As discussed above, Hughes, in fact, did not charge the B-2 subcontract for the costs of developing the advanced RDP.

²¹ The purpose of CAS 401 is to "facilitate the preparation of reliable cost estimates used in pricing a proposal and their comparison with the costs of performance . . ." 48 CFR § 30.401-20.

subcontract as if it contained a requirement to build the RDP and ASC according to a design specification, i.e. a specific design configuration set forth in the subcontract (such as the plans for a building). Hughes established in its separate statement of facts that the B-2 subcontract was a cost reimbursement type contract which required Hughes to meet *performance*, not design specifications, and Hughes could employ any design that could meet the performance requirements.²²

While Hughes' proposal described conceptual approaches to meet the Air Force's performance specifications, the proposal did not represent a promise by Hughes to build the radar according to the configurations described in the proposal. Fact No. 16. The Air Force's chief engineer for the B-2, John Griffen, testified as to the Air Force's understanding of the B-2 radar subcontract:

We would just write a set of performance requirements and let the contractor make the decision as to who and how he wants to build it. We never get involved in the design level.

Griffen Depo., Exh. 12, p. 21, lines 22-24. Hughes' B-2 proposal clearly was not intended to and did not establish a fixed design configuration. Rather, Hughes' proposal was based on what Hughes thought at the time might accomplish the B-2's performance specifications. The fact that a different design approach was undertaken based on efforts to develop

²² Schumer's theory that the B-2 subcontract required Hughes to employ "off the shelf" radar units is inconsistent with the purpose of a cost-reimbursement type contract which the applicable regulations define as being "suitable for use only when uncertain ties involved in contract performance do not permit costs to be estimated with sufficient accuracy to use any type of a fixed-price contract." 48 CFR § 16.301-2. The regulations further provide that cost-plus incentive fee contracts — like the B-2 radar subcontract — are appropriate for "development" programs. 48 CFR § 16.404-1(b)(1). "Off-the-shelf" equipment does not equate to a development program.

new radar units to meet the performance specifications does not in any way give rise to any CAS 401 issue.

Schumer has also failed to demonstrate any nexus between his theory of a CAS 401 violations and any false claim. Schumer asserts that Hughes' invoices violated CAS 401 because the invoices did not refer to the cost sharing provisions of the Commonality Agreements and therefore constituted false claims. Schumer cites no authority for the proposition that invoices are required or intended to contain this type of information, which they are not. CAS 401 does not contain any requirement concerning the type of information to be set forth on an invoice.

Hughes has demonstrated that Schumer's allegations of mischarging and misbidding set forth in the complaint are without merit. By raising an altogether different but equally unfounded allegation that Hughes' accounting practices were in violation of CAS 401, Schumer is attempting to make it appear to the Court as if there is a genuine issue upon which to defeat summary judgment. Since CAS 401 clearly does not stand for the proposition asserted by Schumer, he has failed in that attempt.

* * * *

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,)
<i>ex rel.</i> , WILLIAM J. SCHUMER,)
)
Plaintiff,	)CASE NO. CV 89-390
	)MRP
v.)
	)ORDER DENYING
HUGHES AIRCRAFT COMPANY,	)MOTION TO
	)DISMISS
Defendant.)
_____)

Hughes Aircraft Company's Motion to Dismiss came on regularly for hearing on March 23, 1992 before this Court. The Court having considered the pleadings, papers, and the arguments of counsel,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Motion to Dismiss is denied.

DATED: May 19, 1992

/s/ Mariana R. Pfaelzer
Mariana R. Pfaelzer
United States District Judge

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,	)NOS. 92-55759,
<i>ex rel.</i>	)92-55857
WILLIAM J. SCHUMER,)
	)DC NO. CV-89-0390-
Plaintiff-Appellant/	)MRP
Cross-Appellee,)
	)ORDER
v.)
)
HUGHES AIRCRAFT COMPANY,)
)
Defendant-Appellee/)
Cross-Appellant.)
_____)

Before: D.W. NELSON, REINHARDT, and BRUNETTI,
Circuit Judges.

Hughes Aircraft Company's motion to stay issuance of mandate pending petition to Supreme Court for writ of certiorari is hereby granted.

DEPARTMENT OF DEFENSE CONTRACT PRICING PROPOSAL		FORM APPROVED OMB NO. 22-RO361	
This form is for use in procurements when submission of cost or pricing data is required (SEE DAR 3-[illegible])			
NAME, ADDRESS, AND TELEPHONE NUMBER OF ORGANIZATIONAL ELEMENT RESPONSIBLE FOR SUPPORTING PROPOSAL HUGHES AIRCRAFT COMPANY RADAR SYSTEMS GROUP P.O. Box 92426 Los Angeles, Ca. 90009		TYPE OF CONTRACT CPFF/Award Fee PLACE(S) AND PERIOD(S) OF PERFORMANCE Period of Performance: 1981 - 1990 Place: So. Calif. area	
TOTAL 183,841,123 COST 14,235,504	TYPE OF PROCUREMENT ACTION		
PROFIT/FEE	<input type="checkbox"/> OTHER (SPECIFY)		
TOTAL 198,076,627	<input checked="" type="checkbox"/> NEW PROCUREMENT		
	<input type="checkbox"/> LETTER CONTRACT		
	<input type="checkbox"/> CHANGE ORDER		
	<input type="checkbox"/> UNPRICED ORDER		
	<input type="checkbox"/> PRICE REVISION/ REDETERMINATION		

LINE ITEM NO.	NOTE: List and reference the identification, quantity and total price proposed for each contract line item. A line item cost breakdown supporting this recap is required unless otherwise specified by the Contracting Officer. (Attach continuation page if required.) Total Program - Full Scale Development (Then Year Dollars)	QUANTITY Lot	TOTAL PRICE 198,076,627	REF. Sch A
I. IF YOUR ACCOUNTS AND RECORDS HAVE BEEN REVIEWED IN CONNECTION WITH ANY GOVERNMENT CONTRACT (PRIME OR SUBCONTRACT), GRANT OR PROPOSAL WITHIN THE LAST 3 YEARS BY A GOVERNMENT AGENCY OTHER THAN IRS OR GAO, PROVIDE NAME, ADDRESS AND TELEPHONE NUMBER BELOW				
CONTRACT ADMINISTRATION OFFICE AIR FORCE PLANT REPRESENTATIVE OFF. HUGHES AIRCRAFT COMPANY LOS ANGELES, CA 90009		AUDIT OFFICE DEFENSE CONTRACT AUDIT AGENCY c/o HUGHES AIRCRAFT COMPANY EL SEGUNDO, CA. 90245		
II. WILL YOU REQUIRE THE USE OF ANY GOVERNMENT PROPERTY IN THE PERFORMANCE OF THIS WORK <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO IF YES, IDENTIFY See Special Terms and Conditions of the Contract Volume				
III. DO YOU REQUIRE GOVERNMENT CONTRACT FINANCING TO PERFORM THIS PROPOSED CONTRACT? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO IF YES, IDENTIFY ADVANCE PAYMENTS PROGRESS PAYMENTS OR GUARANTEED LOANS				

IV. HAVE YOU BEEN AWARDED ANY CONTRACTS OR SUBCONTRACTS OF THE SAME OR SIMILAR ITEMS WITHIN THE PAST 3 YEARS?

☐ YES ☒ NO IF YES, IDENTIFY ITEMS CUSTOMERS AND CONTRACT NUMBERS:

V. IS THIS PROPOSAL CONSISTENT WITH YOUR ESTABLISHED ESTIMATING AND ACCOUNTING PRACTICES AND PROCEDURES AND DAR SECTION XV COST PRINCIPLES?

☒ YES ☐ NO IF NO, EXPLAIN

VI. COST ACCOUNTING STANDARDS BOARD (CASB) DATA (PUBLIC LAW 91 379 AS AMENDED):

a. WILL THIS PROCUREMENT ACTION BE SUBJECT TO CASB REGULATIONS?

☒ YES ☐ NO IF NO, EXPLAIN

b. HAVE YOU SUBMITTED A CASB DISCLOSURE STATEMENT (CASB DS 1 OR 2)?

☒ YES ☐ NO IF YES, SPECIFY THE OFFICE TO WHICH SUBMITTED AND IF DETERMINED TO BE ADEQUATE

Hughes A/F Plant Rep. Office (Adequate)

c. HAVE YOU BEEN NOTIFIED THAT YOU ARE OR MAY BE IN NON-COMPLIANCE WITH YOUR DISCLOSURE STATEMENT OR COST ACCOUNTING STANDARDS?

☐ YES ☒ NO IF YES, EXPLAIN

d. IS ANY ASPECT OF THIS PROPOSAL INCONSISTENT WITH YOUR DISCLOSED PRACTICES OR APPLICABLE COST ACCOUNTING STANDARDS?

☐ YES ☒ NO IF YES, EXPLAIN

This proposal is submitted in response to (RIP contract/_____, etc.) P-300-RKB-2-164 and reflects our best estimates and/or actual costs as of this date, in accordance with the instructions of this form.

TYPED NAME AND TITLE
J. R. Rohlinger, Group Controller
Radar Systems Group

SIGNATURE
(illegible) for J.R. Rohlinger

NAME OF FIRM
HUGHES AIRCRAFT COMPANY

DATE OF
SUBMISSION

Previous edition is obsolete. Replaces DD Forms 623-1 through 5. Apr. (illegible) and DD Form 6334. June 72, which are obsolete.